1989 Annual Report

LA COMMISSION DES
DROITS DE LA PERSONNE
DU MANITOBA

THE MANITOBA
HUMAN RIGHTS
COMMISSION

91-02151/

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HUMAN RIGHTS
COMMISSION

1989 Annual Report

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Cover: A special plaque was commissioned by The Manitoba Human Rights Commission and The Winnipeg Press Club, Ltd. to serve as main prize in the 1989 Human Rights Journalism Award. Created by John Graham, the plaque draws its inspiration from the international symbol of human rights issues: the burning candle. Gordon Sinclair, Jr. won the plaque for his series of columns in the Winnipeg Free Press on the police investigation of the shooting death of J.J. Harper.

Minister of Justice
and
Attorney General

Room 104
Legislative Building
Winnipeg, Manitoba, CANADA
R3C 0V8

His Honour,
The Honourable George Johnson, M.D.,
Lieutenant Governor of Manitoba.

Sir:

May it please your Honour, it is my pleasure to present to your Honour, the Annual Report of The Manitoba Human Rights Commission for the year 1989.

James C. McCrae

LA COMMISSION DES DROITS DE LA PERSONNE DU MANITOBA

THE MANITOBA HUMAN RIGHTS COMMISSION

The Honourable James McCrae

Attorney-General

Legislative Building

Winnipeg, Manitoba

R3C 0V8

Sir:

We are pleased to forward to you, the Minister responsible for administration of the Manitoba Human Rights Code, the Annual Report of the Manitoba Human Rights Commission for the calendar year ending December 31, 1989.

Kenneth Filkow, Q.C.
Chair

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The Function of the Manitoba Human Rights Commission

The Universal Declaration of Human Rights declares that: "All human beings are born free and equal in dignity and rights." In Manitoba, this ideal has been translated into law by *The Human Rights Code,* a provincial statute which prohibits discrimination on the basis of ancestry, nationality, religion, sex, age, disability, or other group stereotypes.

The Manitoba Human Rights Commission is the agency responsible for carrying out the provisions of *The Human Rights Code.* The Commission is authorized by *The Code* to accept and investigate complaints of discrimination and to attempt to settle substantiated complaints; to carry out educational activities, and to issue binding advisory opinions. Through these activities, the Commission attempts to reduce discrimination and promote social change leading to equal opportunity for all.

All services provided by the Commission are available to the public without charge.

Enforcement

The Human Rights Code prohibits unreasonable discrimination which is based on group characteristics such as ancestry, nationality, ethnic origin, religion, age, sex, pregnancy and other gender-determined characteristics, sexual orientation, marital or family status, source of income, political belief, and physical or mental disability.

The jurisdiction of the Human Rights Commission is restricted to matters within the constitutional authority of the provincial legislature. Most activities carried on in the province fall within provincial jurisdiction. However complaints against certain federally regulated enterprises, such as airlines, railways and the federal civil service, should be filed with the Canadian Human Rights Commission (telephone 983-2189). The staff of either Commission will answer any questions regarding the appropriate jurisdiction to deal with a particular complaint.

Complaints of Discrimination:

Any person who believes that someone has contravened a provision of *The Human Rights Code* is invited to contact one of the Commission's Intake Counsellors and discuss his or her concerns. All calls are confidential and the Commission will not act without the caller's consent. If the issue falls within the jurisdiction and scope of *The Code*, the details of the allegation are recorded and the Counsellor arranges an appointment to meet with the complainant to obtain a signed Complaint of Discrimination. A copy of this form is included as Appendix B.

After the complaint is filed, the signed complaint form is served (generally by mail) on the party who has been accused of the discriminatory behaviour (the respondent), and he or she is invited to provide a formal reply to the allegations.

As soon as possible, an officer is assigned to conduct a thorough investigation of the allegations and the response. At this stage, it is the investigating officer's responsibility to determine the facts of the case and to ensure that the rights of both parties are fully protected. On conclusion of the investigation, the findings are assessed. If the allegation is not supported by the evidence, the complaint is dismissed. If it appears to be justified, attempts are made to resolve the matter through conciliation.

Conciliation is a process common to most Canadian human rights complaint procedures. This allows for complaints to be voluntarily resolved by the parties concerned without adjudication. All matters related to the conciliation stage are confidential and without prejudice. In this stage, the officer will mediate between the parties, ensuring that they fully understand the process and are able to make informed decisions regarding the initiation or acceptance of any settlement proposal.

Should a complaint not be resolved during the conciliation stage, the board of Commissioners may determine that the matter should be decided by an impartial Adjudicator.

The Adjudicator is appointed by the Attorney-General to hold a formal public hearing. All parties to the complaint are invited to present their arguments. Witnesses may be called and are subject to cross-examination. The Commission has the carriage of the complaint and is represented by legal counsel. The respondent and the complainant may also be represented by legal counsel if they wish.

If the Adjudicator, after hearing all the evidence, rules that a contravention of *The Human Rights Code* has occurred, he or she has the authority to make an order requiring the respondent to comply with *The Code*; to provide the denied service, employment, or housing; to pay lost wages or out-of-pocket expenses incurred by the complainant; or to pay other damages as may be deemed appropriate by the Adjudicator. If there has been evidence of an ongoing practice of discrimination, the Adjudicator may order the respondent to implement an affirmative action plan or other special program

and may direct the Commission to assist in the supervision or implementation of the program.

If any party disagrees with an Adjudicator's decision, he or she may apply to the Court of Queen's Bench for a review of the order within the time limit set out in *The Code*. In some cases, the matter may be appealed to the Manitoba Court of Appeal and even to the Supreme Court of Canada.

With the consent of the Attorney-General, criminal proceedings may be launched in certain cases where criminal prosecution for violation of *The Code* appears appropriate. If a person is found guilty in these proceedings, he or she may be subject to a fine of not more than two thousand dollars for an individual or ten thousand dollars for a corporation.

A chart of the Usual Steps in Processing Complaints can be found at the end of this section.

Advisory Opinions:

To assist the person who feels obliged to consider certain group characteristics when making business decisions but who wishes to ensure that the distinction is not discriminatory, *The Human Rights Code* has provided for binding advisory opinions to be issued by the Manitoba Human Rights Commission.

Any person who is responsible for the implementation of a practice or activity which is within the jurisdiction of *The Code* may apply for an advisory opinion. (An application form may be obtained from any of the offices of the Commission.) When the application is received, it will be assessed to ensure that an advisory opinion would be appropriate and any concerns in this regard will be discussed with the applicant.

As soon as possible, the application will be assigned to an officer who will carry out further research as required. This may include interviews with the applicant or other persons knowledgeable about the issues involved. The results of this research will be discussed with the applicant who will be given the opportunity to revise or modify the proposed practice or activity to bring it into compliance with *The Code*. At the conclusion of this process, the Commission may issue a formal and binding advisory opinion. The opinion will include a full description of the practice or activity and will contain the reasons for the determination.

If an advisory opinion states that a practice or activity is not contravening *The Human Rights Code*, no Complaint of Discrimination will be acted upon by the Commission as long as the opinion remains in effect.

In general, an advisory opinion will remain in effect for as long as the fact situation upon which it is based remains accurate. The Commission may, however, revoke or modify an advisory opinion for other reasons, such as precedent-setting rulings by a Board of Adjudication or the Courts. When an opinion is to be revoked or modified, it remains in effect until the Commission formally notifies the business or organization who requested the opinion.

If any person believes that an advisory opinion issued by the Commission is inappropriate, he or she may request that the opinion be revoked or modified. The Commission will consider such requests and take the appropriate action.

All advisory opinions issued by the Commission will be accessible to the public for inspection and will be reported in the annual report of the Commission.

Education

It has long been understood by human rights practitioners that discrimination cannot be overcome by relying totally on the resolution of individual complaints. While persons who have been subjected to illegal discrimination must certainly have access to the remedies to which they are entitled under the law, there are some discriminatory practices which are more effectively dealt with through other means.

For example, there are many instances of illegal discrimination which are not brought to the attention of the Commission. Sometimes the victim may not be aware of his or her rights to a remedy under the law or may choose not to complain for a variety of reasons. In addition, negative and hostile attitudes based on prejudice and stereotypes often arise in situations which are beyond the jurisdiction of human rights legislation. Children taunt each other in the streets and playgrounds with racial slurs; people are humiliated and embarrassed when confronted with bigotry and prejudice in social settings or in public places; and neighbourhoods are torn apart by racism and intolerance.

The Supreme Court of Canada has, on numerous occasions, noted the special nature of "discrimination" as a legislatively prohibited activity. It has stated that the legislation is intended to be "remedial" rather than "punitive" and emphasized that the primary function of the Human Rights Commission is to change public behaviour and attitudes. In this context, the importance of the educational and persuasive role of the Commission is clearly evident.

The Human Rights Code acknowledges that a combination of approaches is necessary to effectively combat discrimination and its immediate and historical effect, and mandates a variety of activities.

In addition to the requirement that the Commission accept and investigate formal complaints and issue advisory opinions, Section 4 of *The Code* states that the Commission is required to carry out programs which will forward the principle that every person is free and equal in dignity and rights, promote an understanding of and compliance with *The Code*, and ensure that the residents of Manitoba understand their civil and legal rights.

In order to ensure that maximum benefits are obtained from limited resources, the Commission annually reviews and, if appropriate, adjusts its education priorities for the coming year. These priorities are reflected in the Public Education Policy which is included as Appendix C to this report.

Speaker Services Program:

The Commission's education activities include speaker services through which Commissioners and members of the staff are available to speak to groups about the rights and responsibilities described in *The Code* or any other topic related to human rights. Persons wishing to utilize the speaker service should contact the Human Rights Intake Counsellor.

This program also includes outreach and other public relations activities intended to maintain an ongoing liaison with various sectors of the community, and to assist and encourage community initiatives in activities designed to further the principles of human rights.

Special Projects:

The Commission develops and conducts a wide variety of special education projects such as seminars, workshops, and contests. Other projects may involve the development of publications to inform the public about the work of the Commission and the rights and responsibilities set out in *The Human Rights Code*. These and other publications and audio-visual materials are loaned or distributed free of charge to the public.

National and International Liaison

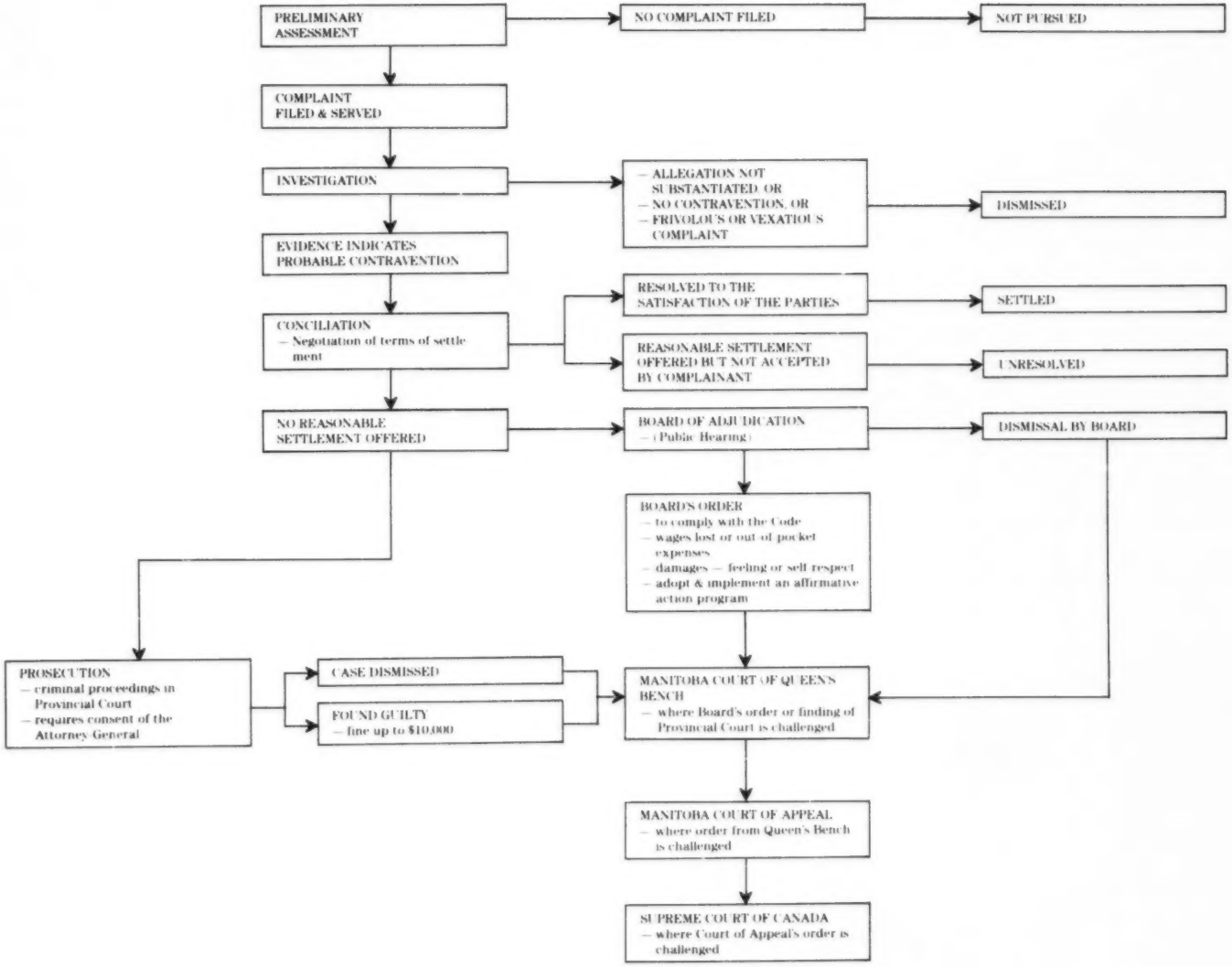
The Manitoba Human Rights Commission is a member agency of three national and international organizations concerned with human rights. These are the Canadian Association of Statutory Human Rights Agencies (CASHRA), the International Association of Official Human Rights Agencies (IAOHRA), and the National Association of Human Rights Workers. Through membership in these organizations the Commissioners and staff are able to keep informed about recent developments in the field of human rights law and education and are able to participate in various staff development and training opportunities. Membership also facilitates the contribution of the knowledge gained from our own experiences and insights to the evolution of human rights theory and legislation.

Another important national organization is the Continuing Federal/Provincial/Territorial Committee of Human Rights Officials. This Committee consists of government representatives and is responsible for monitoring Canada's compliance with the various international conventions relating to human rights to which Canada is a party. The mandate of the Continuing Committee encompasses all human rights issues which form the basis of the international instruments. This includes economic rights, civil and political rights, the rights to be free from disappearance and torture, and many other human rights issues. While such matters do not fall directly within the mandate of the Commission, freedom from discrimination and human rights education are the subjects of many of these instruments and are addressed in specific provisions of others.

The Commission contributes to the work of this committee by taking responsibility for the preparation of reports to the United Nations on such matters as the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention on the Elimination of Racial Discrimination, and on activities related to the celebration of Human Rights Day (December 10th) in the Province of Manitoba. In addition, the Executive Director has been designated by the Attorney-General to provide assistance and backup to the Government of Manitoba's official representative to the Committee.

Through the Committee, new and emerging human rights issues are brought to the attention of Ministers Responsible for Human Rights from all Canadian jurisdictions at regular Ministerial Conferences.

Usual Steps in Processing Complaints


PRELIMINARY ASSESSMENT
NO COMPLAINT FILED
NOT PURSUED
COMPLAINT FILED & SERVED
INVESTIGATION
– ALLEGATION NOT SUBSTANTIATED OR
– NO CONTRAVENTION, OR
– FRIVOLOUS OR VEXATIOUS COMPLAINT
DISMISSED
EVIDENCE INDICATES PROBABLE CONTRAVENTION
RESOLVED TO THE SATISFACTION OF THE PARTIES
SETTLED
CONCILIATION
– Negotiation of terms of settlement
REASONABLE SETTLEMENT OFFERED BUT NOT ACCEPTED BY COMPLAINANT
UNRESOLVED
NO REASONABLE SETTLEMENT OFFERED
BOARD OF ADJUDICATION
– (Public Hearing)
DISMISSAL BY BOARD
BOARD'S ORDER
– to comply with the Code
– wages lost or out-of-pocket expenses
– damages – feeling or self respect
– adopt & implement an affirmative action program
PROSECUTION
– criminal proceedings in Provincial Court
– requires consent of the Attorney General
CASE DISMISSED
FOUND GUILTY
– fine up to $10,000
MANITOBA COURT OF QUEEN'S BENCH
– where Board's order or finding of Provincial Court is challenged
MANITOBA COURT OF APPEAL
– where order from Queen's Bench is challenged
SUPREME COURT OF CANADA
– where Court of Appeal's order is challenged

Personnel

The Manitoba Human Rights Commission consists of two components. One component is the board of Commissioners, chosen from the public at large by the Lieutenant Governor-In-Council. The board meets on a monthly basis and is responsible for the policies and general direction of the Commission. The second component is the civil service staff, which carries out the day-to-day activities of the Commission.

The Responsibilities of the Board of Commissioners

Commissioners are selected from various geographic, cultural, social, and economic sectors of the province. They are appointed for three year terms, and serve on a part-time basis. There are thirteen Commissioners, one of whom is the Chairperson and another the Vice-Chairperson.

The board of Commissioners establishes the policies which determine the manner in which the professional staff administer the programs and activities of the agency. It is also the function of the board to determine the appropriate disposition of all complaints, and to issue binding advisory opinions.

One point that should be stressed is that neither the staff nor the board of Commissioners has the authority to order compensation or remedies for persons who feel they have suffered as a result of discrimination. If it appears that *The Code* has been violated and efforts to reach a mutually agreeable settlement have been unsuccessful, the only further action which may be taken by the Commission is to request the Attorney-General to appoint an impartial adjudicator to hear the matter and make an appropriate order. Where a criminal prosecution for violation of *The Human Rights Code* appears to be appropriate (not a common occurrence) the Commission may recommend that the Attorney-General commence a prosecution.

The Duties of the Staff

Human rights work is a demanding profession. Human rights professionals are constantly placed in sensitive situations, and they must bring to their work a wide variety of skills. They are required to be effective listeners and to have the ability to relate to persons from varied backgrounds, while maintaining neutrality and objectivity.

The Intake Counsellors respond to all inquiries from the public and will assist in the filing of formal complaints. They will accept requests for speaker services, provide information regarding other services of the Commission, and assist callers to reach appropriate alternate agencies if *The Human Rights Code* does not appear to be applicable. When workloads permit, intake staff will also assist in the development and delivery of educational programs and services.

The Human Rights Officers conduct the investigation and conciliation of complaints, the assessment of advisory opinion applications, and a variety of educational activities. Officers assigned to the Public Programs Unit are primarily responsible for education and will work with business, community groups, and other institutions and organizations in the delivery of human rights education programs. Officers assigned to the Compliance Unit are primarily responsible for complaints and advisory opinions. Coupled with investigative skills, these officers must also be able to negotiate settlements between often hostile parties without compromising the intent of *The Code*.

The quality and efficiency of the work carried out by the Commission is greatly enhanced by a small complement of competent and dedicated support staff who provide the necessary administrative support services.

In each of the Commission's regional offices, the Regional Human Rights Officer investigates and conciliates complaints, conducts educational activities, and supervises the general administration of the office. In The Pas, the Intake Clerk responds to inquiries and accepts complaints, and provides clerical and secretarial support services. The Regional Human Rights Officer in Brandon is assisted by a secretary.

The staff work under the direction of the Executive Director, who is responsible to both the board of Commissioners and the Department of Justice for the effective operation of the Commission.

The Commissioners

Chairperson:
Kenneth Filkow, Q.C.

Commissioners: (As at December 31, 1989)

		Term Expires
Kenneth Filkow, Q.C.	Chairperson	1991
Molly Robinson	Vice-Chairperson	1991
Marianne Bossen	Commissioner	1989
Francesco Grande	Commissioner	1989
Marion Robinsong	Commissioner	1989
Kue Young	Commissioner	1989
Brigitte Graba	Commissioner	1990
Socorro Juan	Commissioner	1990
Lorraine Sigurdson	Commissioner	1990
Amarjeet S. Warraich	Commissioner	1990
Robert Laine	Commissioner	1991
Polly Pow	Commissioner	1991
Ed Wood	Commissioner	1991

Minister:

The Honourable James C. McCrae,
Minister of Justice
and Attorney-General

The Commissioners:

KENNETH FILKOW, Q.C. — Chairperson

Kenneth Filkow has been a practising lawyer in the City of Winnipeg since 1966. Spanning the years he has represented litigants in many trials in which civil, human and economic rights or positions have been an issue. He has also presided as an arbitrator determining such matters. He is a past member of the Board of Directors of Legal Aid Manitoba and past Chairperson of the Civil Justice & Criminal Justice divisions of the Manitoba Bar Association.

MOIRA (MOLLY) ROBINSON — Vice Chairperson

Molly Robinson is the Chief Executive Officer for the Thompson YWCA, which serves Thompson and the region. She has resided in that city for 26 years and has been instrumental in the founding of many services, organizations and facilities for her community. She has served on local, regional, provincial and national boards at the executive level. Ms. Robinson, served on City of Thompson Council for six years, and is also a published poet, artist and writer. This is her second appointment to the Human Rights Commission, having served from 1978 to 1981.

MARIANNE BOSSEN

Marianne Bossen, M.A. (Econ.) is a Consultant on Employment and Social Policy. She has pioneered research into equal opportunities for women in employment. In recent years, prompted by personal experience with disability, she has become involved in the concerns of physically handicapped persons. She serves on the Board of Management of the Canadian Paraplegic Association (Manitoba Division).

BRIGITTE GRABA

Brigitte Graba has worked at Rossbrook House in the core area of Winnipeg since 1983. Her main concern is youth employment and she has been active in both the Summer Employment Action Committee and Fair Action for Community Employment. Ms. Graba is currently a member of the board of the North End Women's Centre and a volunteer of the Networking Committee of the German Canadian Congress.

FRANCESCO (FRANK) GRANDE

Frank Grande, an owner/manager of Delgran Real Estate, is Past-President of the Italian Canadian League of Manitoba. He is an active member of various commuity groups and has served as Vice-Chairperson of the Manitoba Advisory Council on Immigration and Ethnic Relations, member of the Board of the Italia Credit Union and representative for the Italian community on the Manitoba Intercultural Council.

SOCORRO (CORY) JUAN

Cory Juan is a teacher in Winnipeg School Division No. 1. She is presently active in the Maples Community Club Fund Raising and St. Peters Catholic Church Council. Ms. Juan is a Seven Oaks Filipino Parents Council Advisor, Secretary of Timpuyog T. Ilokano Ditoy Manitoba and Past President of the Manitoba Association of Filipino Teachers Inc.

BOB LAINE

Bob Laine is General Manager of 1290 FOX and Q-94FM radio stations. He is 1st Vice President and Telethon Chairman of the Variety Club of Manitoba, has served on the Board of Kinsman Reh-Fit Centre and is past-President of the Broadcasters Association of Manitoba. Mr. Laine also serves many broadcast related industry associations.

PAULETTE (POLLY) POW

Polly Pow was born in Shoal Lake and raised in Gimli and Brandon. She received her B.A. from Brandon University. Ms. Pow is an active member of the community and has participated on various boards and committees. Professionally, she has worked in areas dealing with wife abuse, crisis housing, childcare, counselling and parole. Her volunteer work has primarily centered around organization fund raising.

MARION ROBINSONG

Marion Robinsong, born and raised in Brandon, Manitoba, is a Resource Teacher with the Brandon School Division. She holds Bachelors degrees in Arts and Education from Brandon University and also attended the University of Santa Barbara for a post-graduate year of Studies in Education. She is a member of the Manitoba Teachers' Society, chairs the Brandon Equality in Education Committee, holds a membership in the Manitoba Association of Resource Teachers, and sits on the provincial Affirmative Action Task Force.

LORRAINE SIGURDSON

Lorraine Sigurdson has been employed by the Canadian Union of Public Employees for over three years and is currently Acting Equal Opportunities Representative. Prior to that she was President of CUPE Local 1550 at the Health Sciences Centre and Secretary of the Manitoba Division of CUPE. Ms. Sigurdson's work currently focuses on servicing and negotiating for various locals within CUPE in Manitoba.

AMARJEET S. WARRAICH

Amarjeet Warraich was born in Punjab, India and migrated to Winnipeg in 1972. He is dedicated to the cause of human rights and is actively involved in various cultural and community organizations. Mr. Warraich is Vice-President for the Manitoba Region and the Winnipeg Chapter of the National Association of Canadians of Origins in India and is also a member of the Multicultural Advisory Council.

ED WOOD

Ed Wood was born in St. Theresa Point, Manitoba and graduated from the Manitoba Technical Institute in 1956. He was employed with The Hudson Bay Company and both the Ontario and Manitoba Provincial Governments before starting his own building material supply company in 1974. Mr. Wood is active in a variety of business associations, church and other community groups.

T. KUE YOUNG

Kue Young, M.D., M.Sc., FRCP(C), has lived in Canada since 1966 and is an Associate Professor in the Dept. of Community Health Sciences at the University of Manitoba. He has worked as a general practitioner in Saskatchewan, a C.U.S.O. volunteer in Tanzania and a public health administrator of Indian Health Services in Northwestern Ontario. Dr. Young's research interests are in the health impact of social change among rural peoples in Northern Canada and in developing countries.

The Staff (As at December 31, 1989)

Executive Director:
Durlene Germscheid

Administrative Support Services
Administrative Officer:
Linda Kopys

Administrative Secretaries:
Frieda Brandt
Donna Harland
Donna May
Jeannette Roque
Maureen Sorokowski

The Pas Office
Regional Human Rights Officer:
Ronald Chief

Regional Intake Officer:
Elizabeth Bennett

Public Programs
Co-ordinator:
Patricia St. Loe

Education Officers:
Judith Burch
Victor Schwartzman

Intake Counsellors:
Barbara Delorme
Derek Legge

Legal Counsel:
Aaron Berg
Civil Litigation Branch
Dept. of Justice

Compliance
Director of Compliance:
Mariann Burka

Team Supervisors:
Buelah Adams
Sharon Wickman

Enforcement Officers:
Debra Beauchamp
Patrick Daly
Nancy Flintoft Meronek
Asfia Sultan
Kenneth Swain
Stan Wood
Roger Young

Brandon Office
Regional Human Rights Officer:
Peggy Pchajek

Regional Secretary:
Audrey Common (Term)

An Overview of 1989 Activities

Nineteen eighty-nine was a significant year for the judicial interpretation of human rights law in Manitoba, specifically relating to its protections for women. In May, the Supreme Court rendered its much awaited decision in two Manitoba cases which have had a profound impact on the rights of women in this province, and indeed throughout the country. In *Govereau and Janzen versus Platy Enterprises,* the Supreme Court reversed the decision of the Manitoba Court of Appeal and reaffirmed that sexual harrassment was a form of sex discrimination. Similarly, in *Brooks et al versus Canada Safety Limited,* the Supreme Court concluded that discrimination based on pregnancy was a form of sex discrimination, in this case reversing its own earlier position. These decisions are discussed in more detail elsewhere in this report.

Also during 1989, the Manitoba Human Rights Commission began the process of future directions planning which it had announced in the 1988 Annual Report. The objective of this process is to develop a long range strategy based on a more proactive approach to the attainment of human rights goals and objectives.

To this end, considerable effort was expended to develop and test additional methods for reducing the backlog. The results were offset, however, by a 25% increase in new complaints filed and the backlog was not significantly altered. Nonetheless, some of the new measures have had a significant impact on closure rates and have, therefore, raised the hope that there might be a reduction in the size of the backlog over the coming year.

Preparations have also been underway for a planning conference to take place early in 1990. At this conference, staff and commissioners will work together to define the basic elements of the long range strategy and to develop a plan of action for achieving short term objectives.

Personnel Changes

Commissioners

In accordance with the provisions of *The Code,* the terms of four commissioners expired in 1989. At year end, however, these commissioners had not been replaced or reappointed. They have, therefore, continued to serve. It is expected that new appointments will be made by the time of the distribution of this report.

The Code requires that the new appointments be made for terms of less than three years in order to ensure that four terms expire in each year.

Staff

Two employees left the Commission in 1989. Katherine Fraser Hominick resigned from her position as Human Rights Officer in the Winnipeg office, and the Brandon regional office lost the services of Isobel Michie. Secretarial services are being temporarily provided to the Brandon office by Audrey Common.

At the end of the year, Roger Young, a former employee, rejoined the Commission filling the position of Human Rights Officer, and the selection process for a Brandon Intake Clerk was underway.

With the reclassification of a position in the Public Programs Unit, Paddy St. Loe was promoted to Coordinator of Public Programs.

Compliance Activities

During 1989, the Commission continued its efforts to stabilize and reduce the backlog of complaints and advisory opinions. At the same time, it endeavoured to maintain and improve its capacity to meet the challenge of new demands on its compliance mandate.

Efforts to reduce the backlog continued to focus on structural and procedural changes. New steps in the complaint process were introduced to permit early assessment. This has helped to focus the degree and range of investigations required, and to permit earlier determinations by the Commission. To date, these efforts have had an observable impact in that there was a substantial increase in the rate of case closures in the last quarter of the year. The Commission is also encouraged by the significant drop in the number of withdrawn complaints from 30% of all dispositions in 1988 to 17.6% in 1989. This appears to be, at least in part, attributable to these same procedural changes.

The Commission is concerned, however, with the reduction of the number of requests for advisory opinions to 50% of the applications received last year. This provision of *The Code* (unique to Manitoba legislation) is intended to facilitate the prevention of discrimination by allowing businesses and organizations to ensure that their business practices are in compliance with *The Code* by obtaining a binding advisory opinion from the Commission. Over the coming year, the Commission will be considering measures to protect and ensure the continued effectiveness of this initiative.

Other steps being taken to increase the efficiency of the compliance process include the development of procedures for the use of new investigation and conciliation techniques. Training has been conducted in these procedures and a pilot project is to begin in January

of 1990. These new procedures are expected to result in a significant saving of time, in appropriate cases, by bringing the parties together early in the complaint process to narrow the issues in dispute and to enhance the possibility of an early resolution.

Regrettably, 1989 saw the compliance backlog spread to a regional office. Until this past year, the Human Rights Officer in each regional office has been able to manage the complaints filed within the regions. The Brandon Officer has, however, been required to fulfill intake responsibilities in addition to her duties as Human Rights Officer. This situation, exacerbated by the resignation of the Brandon Regional Secretary, has pushed the Officer's caseload beyond the limit. Brandon cases will now be required to spend some time in backlog pending assignment. Early in 1990, the vacant position will be filled by a Regional Intake Clerk who will be able to assume some of the workload now carried by the Regional Officer.

Additional activities to improve the quality and efficiency of the complaint process included the updating of the Commission's previous review of judicial precedent on damage awards available under human rights legislation (first compiled in 1987). This was accomplished with the assistance of the Student Temporary Employment Program.

The previously mentioned decisions of the Supreme Court enabled the Commission to proceed on a number of complaints which had been inactive for some time due to the uncertain status of sexual harassment or pregnancy based discrimination. While the new *Human Rights Code* explicitly prohibits these forms of discrimination, almost two dozen complaints which had been filed under the previous legislation had been held in abeyance pending the Supreme Court ruling. These complaints have now been reactivated, and concerted efforts are underway to resolve them as expeditiously as possible.

With the Government's appointment of the adjudication panel in the Fall of 1988, the Commission has been able to refer to adjudication those complaints which could not be voluntarily resolved. In 1989, the Commission requested the Attorney-General to appoint adjudicators from the panel to hear and decide ten complaints. Of the matters referred in 1989, no hearings had been completed at year end.

Detailed reports of legal proceedings, and statistical information on the compliance activities of the Commission can be found elsewhere in this report.

Special Programs

While the Commission is deeply concerned about the effects of the backlog on individual complaints, it is also mindful of the fact that combatting systemic discrimination through the promotion of affirmative action plans is a more effective means of achieving equity in our society. As reported in the 1988 Annual Report, the Commission is working towards the development of an agency model which will permit more activity in these areas. In anticipation of this new direction and to assist staff in dealing with current complaints of systemic discrimination, these issues were the focus of training for the Compliance Unit during the past year. The Commission is grateful to David Hosking, Regional Director for the Canadian Human Rights Commission, and to Mona Katawne, Director of Corporate Equity for the Manitoba Telephone System, who assisted with this training by sharing their considerable expertise. Staff also attended a workshop conducted by Sandra Hrychuk and Jerry Sopko of the Canada Employment and Immigration Commission Federal Contractors Program. This workshop was organized in conjunction with the Manitoba Employment Equity Practitioners Association.

Early in 1989, the Commission was able to circulate the discussion paper on the subject of "Affirmative Action for Persons with Disabilities" which had been prepared by Dr. Bill Black of the University of British Columbia. During the year, the Special Programs Committee received several written submissions and heard a number of verbal presentations in response to the paper. This input has provided the Committee with invaluable information from the perspective of persons with disabilities, employers, and others who may be affected by affirmative action initiatives in this area. The Committee is now studying these contributions and will be developing policy recommendations for consideration by the Board of Commissioners.

In the context of the Commission's internal plan of action for the International Decade of Disabled Persons, a policy was adopted which outlines the Commission's commitment to accommodate the needs of persons with disabilities in its delivery of services and programs.

Educational Activities

The Commission continues to hold that education is an essential and effective weapon in the fight to eradicate discrimination. As the Commission moves towards a more proactive role in program and service delivery, the public education program can be expected to become even more effective. This will, however, require increased attention to good planning and coordination. In preparation for this change and to enhance the present management of the public education program, one education position was upgraded during 1989 to create a position for a Coordinator of Public Programs.

In accordance with its stated priorities for the year, the Commission continued to work towards the promotion of the teaching of human rights in Manitoba schools. This past year saw the completion of a manual designed to provide school administrators with guidelines for the administration of schools in keeping with human rights principles. A number of Winnipeg schools have volunteered to pilot the use of this manual. It is expected that the manual will be ready for publication before the end of the coming year.

An updated version of the Commission's previously published Inventory of Human Rights Teaching Materials was completed during the year; and a member of the Commission's staff continued to provide support to a committee for the development of human rights curriculum within Winnipeg School Division #1.

As one of several activities in its program of business education, the Commission participated in the celebration of Small Business Week in October of 1989. In an effort to ensure a responsiveness to issues of concern to businesses throughout the province, an outreach project was initiated which involved visits to five communities in Southwestern Manitoba. An officer of the Commission met with Chambers of Commerce, local business associations, and other organizations, reaching a total of 78 individuals.

Work was also carried out during 1989 in the preparation of three publications in the series of "Guidelines" produced to assist employers, proprietors, and others who are governed by the provisions of *The Human Rights Code*. An updated version of The Housing Guidelines was completed and will be circulated to representatives of the industry for comments and suggestions before a final draft is approved for publication. In cooperation with The Manitoba Restaurant and Food Services Association, a new project was initiated to produce guidelines for the hospitality industry. This publication will assist those who are responsible for the management of restaurants, hotels, and other kinds of hospitality services in their dealings with both employees and customers, and will provide advice on the nondiscriminatory application of potentially difficult or troublesome policies and practices such as dress codes and marketing methods. Work is also continuing on the development of guidelines for employee benefit plans.

The Commission also added to its publications with the addition of four new fact sheets in 1989, one of which highlights some of the issues of discrimination in the hospitality industry which will be addressed in more detail in the guidelines. Another, which is of particular interest to the business community, explains the procedure for obtaining a binding advisory opinion.

The policy on "A.I.D.S. and other communicable diseases" which was developed by the Commission and publicly announced in 1988, formed the basis for a fact sheet on A.I.D.S. and H.I.V. Infection. It is hoped that this information will assist those who would discriminate and those who may be discriminated against to understand the rights and responsibilities set out in *The Human Rights Code*.

The fourth fact sheet was developed to explain the new legislative provision which specifically includes sexual orientation as a prohibited ground of discrimination.

Another new publication, completed in 1989, is a brochure which provides basic information about the Commission in five different languages. In addition, a number of existing publications were transcribed to audio-tape. These projects were undertaken to eliminate barriers to communication which often result from language and disability, and which could result in a denial of access to the rights and remedies of *The Code*.

During 1989, Commission staff responded to 142 requests for consultations and speaker services to organizations representing government, business and other segments of the community. Outreach activities included a presentation to the Aboriginal Justice Inquiry.

Public education policy for the coming year is not substantially different from 1989 (see Appendix C). The primary emphasis will continue to be preventative education with every effort being made to ensure that human rights information is available in all areas of the province. During the past year, the Commission was able to complete the development of internal action plans for the remainder of the International Decade of Disabled Persons, and for the Second International Decade for Action to Combat Racism. The action plans reflect the general priorities described above with a continued focus on racial discrimination against Aboriginal Manitobans and on the elimination of barriers to equality which confront persons with disabilities.

Human Rights Day

To mark Human Rights Day 1989, a candle lighting ceremony was held in the rotunda of the Legislative Building on December 10th. Chairperson Ken Filkow presided over the event which included greetings from both the provincial and municipal governments, and a speech by Karen Ridd. Ms Ridd spoke eloquently and movingly about her experiences as a volunteer human rights worker in El Salvador. The Commission also welcomed the participation of representatives of the Manitoba Department of Family Services who staffed a display entitled "Refugees in Transition — Manitoba's Response". The special display

highlighted patterns of immigration to Manitoba by refugees, and the programs offered by Manitoba to assist them in the transition.

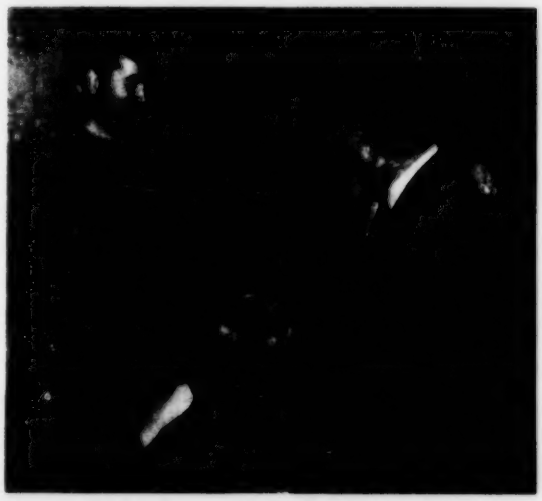
The ceremony was also the occasion of the presentation of the 1989 Human Rights Journalism Award which forms the subject of the cover of this report. The award is cosponsored by the Commission and the Winnipeg Press Club. The recipients of the award are determined by a jury composed of representatives of working journalists, the Manitoba Human Rights Commission, and the Winnipeg Press Club. This year, the award was presented to Gordon Sinclair, Jr. for a series of columns in the Winnipeg Free Press precipitated by the shooting death of J.J. Harper, a noted Native leader. The jury recognized the unusual impact of these columns in helping to focus public opinion on the subsequent investigation of the shooting and the manner in which it was handled by the Winnipeg Police Department.

Second prize was awarded to Dan Lett (also from the Winnipeg Free Press) for a series of articles entitled "Care Crisis". This series eloquently discussed the difficulties of looking after people with disabilities at home, and the problems experienced in institutions which assist disabled persons. Jim Compton and Johanna Brand of the C.B.C. received honourable mention for a documentary entitled "Native Policing" which examined the possibility of systemic discrimination in the hiring practices of the City of Winnipeg Police Department. The jury was impressed with the manner in which they handled a complex and unusual topic.

Other events were organized by community groups and organizations throughout the province, and the following governments issued special proclamations of Human Rights Day or Human Rights Week:
Province of Manitoba
City of Winnipeg
Town of Dauphin
Town of Emerson
Town of Gimli
Town of Gladstone
Town of Morden
Town of Selkirk
Town of Snow Lake
Town of Stonewall
Town of Swan River
Town of The Pas
Town of Winkler
Village of Arborg
Village of McCreary
Village of Notre Dame De Lourdes
Village of Powerview
Village of Winnipegosis
Rural Municipality of Brokenhead
Rural Municipality of Cartier
Rural Municipality of Grey
Rural Municipality of McCreary
Rural Municipality of Russell
Rural Municipality of Victoria

Karen Ridd at Human Rights Day ceremonies, Legislative Building, Winnipeg, speaking about her experiences as a volunteer human rights worker in El Salvador.

Manitoba Department of Family Services display "Refugees in Transition — Manitoba's Response" at 1989 Human Rights Day ceremony.



Human Rights Commissioner Bob Laine (right) presenting 1989 Human Rights Journalism Award to Gordon Sinclair, Jr. (left).

National and International Events

As has been the case in recent years, the Commission's participation in the International Association of Official Human Rights Agencies (IAOHRA) and the National Association of Human Rights Workers (NAHRW), both of which are based in the United States, has been restricted by scarce resources.

The 1989 conference and business meeting of the Canadian Association of Statutory Human Rights Agencies (CASHRA) was held in Victoria, British Columbia, and the Commission was able to send a delegation. Further support for CASHRA activities was provided through committee participation. The Executive Director continued on as a member of the Standing Committee on Training and, when external events resulted in the loss of the chairperson, assumed these responsibilities on an interim basis until another chairperson could be appointed. She also agreed to join the Executive Committee to assist in the planning of the 1990 Conference.

The Executive Director also continued to attend the meetings of the Continuing Federal/Provincial/Territorial Committee of Human Rights Officials as a representative of the Government of Manitoba.

Future Directions

As reported in last year's annual report, it is the goal of the Commission to develop a strategy for the delivery of its programs and services which will allow for the identification of priority issues and the mobilization of resources to effectively address these issues. At the Future Directions Planning Conference, scheduled to take place in March of 1990, the commissioners and staff will determine the basic elements of this strategy. It will then be incumbent upon the staff of the Commission to prepare for the implementation. Organizational and procedural changes will be required, and other activities will be necessary to assist the board of Commissioners to identify the priority issues for attention in the coming year.

In order to ensure that the Commission continues to fulfill its mandate with respect to the complaints, advisory opinion applications, speaker service requests, etc. which will continue to be a major focus for the agency, efforts to streamline current procedures will be ongoing.

Nineteen ninety will be both busy and challenging for the Commission, as staff and commissioners work towards the implementation of a new strategy for the agency by the end of the year.

Advisory Opinions

The Human Rights Code includes provisions for persons subject to the prohibitions of *The Code* to obtain a written binding "advisory opinion" as to whether any act or omission by them is in compliance with or contravenes *The Code. The Code* also requires that such advisory opinions be available for public inspection and be summarized in the Commission's Annual Report.

The following are summaries of advisory opinions issued by the Commission in 1989:

Employment (Hiring)/Ancestry (Aboriginal) as a Bona Fide Occupational Requirement

Application:

Ma Mawi Wi Chi Itata Centre Inc. applied for an advisory opinion as to whether they could continue the practice of hiring only applicants who are of aboriginal ancestry for all positions in the agency ie. Social Worker, Youth Support Worker, Management, Administrative Support Staff, Homemaker, and Foster Parents. Staff in all these positions have direct contact with the clientele who are families of aboriginal ancestry.

Background:

Ma Mawi Wi Chi Itata Centre is a child and family resource centre in Winnipeg which provides support programs and services. "Ma Mawi Wi Chi Itata" means "We all work together to help one another." The cultural philosophy of the Centre is that children and parents also rely for care, protection and nurturance on the extended family and the urban aboriginal and Metis community as a whole. The goals and objectives of the agency include the promotion of Native culture as the basis for developing programs and services as well as providing opportunities for developing Native cultural awareness within the community as a whole. The goals and objectives also include the promotion and facilitation of Native community involvement in the development and provision of services to families.

It was contended that the practice of hiring persons of aboriginal ancestry is necessary in order to respond effectively to the special needs of people of aboriginal ancestry in terms of family breakdowns and destruction, the loss of children from the family unit and the slow destruction of the youth. The hiring of non-aboriginal persons would undermine the authenticity and effectiveness of the service provided in that the clientele would mistrust such persons and consequently not use the service.

Opinion:

The Human Rights Code stipulates that it is not discrimination to plan, advertise or implement a special program which has as its object "The amelioration of conditions of disadvantaged individuals or groups. . . and achieves or is reasonably likely to achieve that object." At the same time *The Code* prohibits discrimination in employment based on ancestry unless it is based upon "bona fide and reasonable requirements or qualifications for the employment or occupation." The Commission examined the application of both these provisions and their interrelationship in this context. The Commission concluded that the services offered by Ma Mawi Wi Chi Itata Centre are designed to ameliorate the disadvantage of aboriginal children and families in the child welfare system and are reasonably likely to achieve that object. Furthermore, the Commission concluded that the hiring of persons of aboriginal ancestry is critical to overcoming the historic disadvantages suffered by aboriginal peoples in the provision of child and family services, and to providing an effective alternative that is more culturally and linguistically appropriate. As such, the Commission was satisfied that hiring of persons of aboriginal ancestry is a bona fide and reasonable occupational requirement.

Employment Equity Program/Women, Aboriginal People, Persons with Disabilities and Visible Minorities

Application:

The Manitoba Telephone System (MTS) applied for an advisory opinion regarding whether their employment equity program constituted a valid affirmative action program under *The Human Rights Code.*

Background:

MTS, a provincial crown corporation providing telecommunications services and products, designed and planned to implement an employment equity program. In general, MTS's plan proposed to identify and eliminate systemic discrimination in the organization's employment policies, practices and procedures. Four target groups were identified — women, visible minorities, aboriginal people and persons with disabilities. The plan also proposed to implement measures which would remedy the effects of past or historical discrimination, e.g. preferential training and hiring of target group members.

The plan included all the elements of an affirmative action plan. For example, the Corpora-

tion had clearly demonstrated a commitment to a successful affirmative action program through management policy statements and allocation of resources. As part of its plan development, MTS conducted an internal workforce analysis through the use of an employee questionnaire. This analysis enabled MTS to determine the degree of target group representation within the various occupational groups. The Corporation also conducted an availability analysis. This involved the collection of availability data to determine the number of target group members having the requisite skills for job qualification purposes within Manitoba. Utilization analysis was also done. This involved the comparison of workforce and availability statistics to establish where under-utilization of target groups existed. The results of the availability analysis indicated a need for a systems analysis to further examine MTS's employment practices (formal and informal) to determine whether any have an adverse impact on target groups. The plan included both qualitative and quantitative goals. The qualitative goals included support and remedial measures which were developed in response to the systems analysis. With respect to quantitative goals, the overall objective was to achieve equity by the year 2000 in the long term. The plan also included monitoring procedures (ie. regular analysis of both quantitative and qualitative goals).

Opinion:

The Human Rights Code prohibits discrimination in employment on the basis of group characteristics such as sex, race and physical disability. However, *The Code* also clearly stipulates that it is not discriminatory to plan, advertise or implement an affirmative action program.

The Commission determined that the Corporation's affirmative action plan met the criteria for a valid affirmative action program as set out in Section 11 of *The Code* in that it "has as its object the amelioration of conditions of disadvantaged individuals or groups, including those who are disadvantaged because of any characteristics referred to in subsection 9(2) and achieves or is reasonably likely to achieve that object."

Employment (Referral for Employment)/Age (60 and Older) as a Bona Fide Occupational Requirement

Application:

The Senior Citizens Job Bureau Inc. applied for an advisory opinion concerning its practice of providing a free employment referral service for individuals aged 60 and older and employers, both having registered with the Bureau. The Bureau requested special program approval under Section 11 of *The Human Rights Code* to continue this practice.

Background:

The aim of the Senior Citizens Job Bureau Inc. is to accommodate individuals aged 60 and older with their special needs be they employment, economic, social, or a combination. The program addresses the condition that older people are at a competitive disadvantage within the labour market. It promotes the older worker by marketing his or her expertise to employers who are also registered with the Bureau. It assists the older worker who wants or needs to work, to find part-time and temporary jobs. In 1988 the Bureau received 3,976 job orders from employers. Of these 2,984 were filled. These job orders were predominantly for casual/part-time jobs. The Canada Employment Centre approves Outreach projects of which the Senior Citizens Job Bureau Inc. is one.

Opinion:

The Human Rights Code prohibits discrimination in employment based upon age unless the discrimination is based upon "bona fide and reasonable requirements or qualifications for the employment or occupation." The Bureau claims its practice of accepting and referring to employment only those individuals who are 60 and older is justified and therefore that its program is justified as a "special program" to focus only on individuals aged 60 and over.

The disadvantage of persons aged 60 and over is primarily due to a decrease of income and a decrease in the prospect of employment. After age 59 there is a drastic drop of approximately $4,500 a year in average total income for individuals aged 60 and over. Average total income continues to drop for individuals 65 and over. The economic disadvantage of Canada's older population is further demonstrated in a report prepared by the National Council of Welfare which shows that 40.7% of unattached individuals between ages 60 and 64 live below the poverty line.

In addition, the standing Parliamentary Committee on Human Rights and Aging in Canada (August 1988) noted the importance of age discrimination in explaining the employment difficulties encountered by older workers.

In summary, the Commission concluded that individuals aged 60 and over are disadvantaged with respect to their economic and employment status so as to warrant pro-active measures such as those provided by the Bureau. The Commission therefore concludes that the Bureau's practice of focusing on individuals aged 60 and over is a special program in the context of Sec-

tion 11 of *The Manitoba Human Rights Code* and that it is therefore bona fide and reasonable for the Senior Citizens Job Bureau Inc. to focus and restrict employment referral services to the special needs of this disadvantaged group.

Service (Training)/Sex and Ancestry as a Bona Fide Occupational Requirement

Application:

The Brandon Core Area Project, formerly the "Employment Preparation Project of Brandon Inc." requested an advisory opinion in regard to their practice of limiting eligibility for their clerical training program exclusively to women with emphasis on aboriginal women and women of visible minorities.

Background:

The Brandon Core Area Training Project is a non-profit operation which is funded by Employment and Immigration Canada — Canadian Jobs Strategy Program, Re-entry. The project is designed to prepare a minimum of ten women for re-entry into the labour force. Under Employment and Immigration Canada guidelines, an eligible re-entry participant is a woman who has difficulty making a successful transition into the labour force due to lack of training and/or work experience, is legally entitled to work in Canada and is unemployed or working part time, 25 hours or less a week.

The project contends that women, natives and visible minorities in particular, find it difficult to secure employment because they lack the education, job specific skills and work experience. Cultural barriers, minimal academic achievement, poor work history and lack of job specific skills are criteria used in the selection process.

Census data confirms that women who lack relevant skills or a post-secondary degree are more likely to be unemployed than men. Aboriginal women in particular have a lower labour force participation rate than non-aboriginal women. Although immigrant women have a higher labour force participation rate, they are overwhelmingly concentrated in the poorly paid labour market sectors such as domestics and sewing machine operators. A Statistics Canada report indicates that this is even more true for women of colour.

Opinion:

The Human Rights Code prohibits discrimination in a service based on sex, ancestry, nationality or national origin or ethnic background. However, *The Code* does allow for the existence of special programs which have as their objective the amelioration of conditions of disadvantaged individuals or groups.

The Commission is mindful that this training program focuses on an occupation in which women as a group have historically been over-represented and all too often segregated. However, they also recognize that for women who are eligible for this training, employment in these positions represents an improvement in their employment opportunities. Without such training, these women would likely remain unemployed or be limited to unskilled minimum wage jobs at best. As such, the training provided through this program does indeed "ameliorate disadvantage" so as to constitute a special program within the meaning of Section 11, and therefore does not appear to violate *The Manitoba Human Rights Code*.

Legal Proceedings

The following are matters which have been decided by, or are currently before a Board of Adjudication or Court. They are included to provide a summary of final decisions rendered in 1989 or most recent developments where the case is still pending.

Supreme Court: Govereau and Janzen vs. Platy Enterprises Ltd. (Pharos Restaurant)

(Previously reported in the 1984, 1985, 1986, 1987 and 1988 Annual Reports)

Background:

Tracy Govereau and Diana Janzen, employed as waitresses at Pharos Restaurant, alleged that during their employment, the cook of the restaurant continually harassed them by grabbing and touching their bodies and making lewd comments about their anatomy. They alleged that in spite of their protests, both to the cook and to the owner, the behaviour continued. Tracy Govereau alleged that her hours were reduced and that she was ultimately terminated by her employer because she complained to the management about the harassment. Diana Janzen alleged that she was forced to terminate her employment because of the cook's behaviour toward her. Both women alleged that they had been subjected to discriminatory conditions of employment and, ultimately, had been terminated because of their sex.

The investigation results appeared to support the complaints and conciliation was attempted but was unsuccessful. As a result, the Attorney-General was requested to appoint a Board of Adjudication to hear and decide the matter. Mr. Yude Henteleff, Q.C. was appointed as Adjudicator and hearings were held in 1984.

Mr. Henteleff found that the appellants had been subjected to persistent and abusive sexual harassment and had been the victims of sex discrimination contrary to *The Human Rights Act*. He found the company and the cook jointly and severally liable and awarded lost wages of $480 and general damages of $3,500 to Diana Janzen, and $3,000 lost wages and $3,000 general damages to Tracy Govereau. (For more details, see the 1988 Annual Report or the Adjudicator's decision.)

The respondent appealed the Adjudicator's decision to the Court of Queen's Bench. The Court of Queen's Bench upheld the Adjudicator's decision but reduced the quantum of damages. (For more details, see the 1988 Annual Report or Justice Monnin's decision.)

The respondent further appealed to the Court of Appeal. The Court of Appeal reversed the judgement of the Court of Queen's Bench. Huband and Twaddle, JJ.A. held that sexual harassment of the type to which the complainants were subjected, was not discrimination on the basis of sex because not all female waitresses were harassed, and because the harassment was based on the complainants' sexual attractiveness and not on their gender. The Court also held that the employer could not be liable for the sexual harassment perpetrated by its employee.

The Commission sought Leave to Appeal the Court of Appeal's decision to the Supreme Court. Leave was granted and arguments were heard in June, 1988. The Women's Legal and Education Fund (LEAF), an organization dedicated to testing equality issues for women before the courts, sought and was granted intervenor status in this case.

1989 Update:

The Supreme Court released its judgement May 4, 1989 ruling that sexual harassment is a form of sex discrimination. Dickson, C.J. writes for a unanimous Court: "Sexual harassment in the workplace is unwelcome conduct of a sexual nature that detrimentally affects the work environment or leads to adverse job related consequences for the victims of harassment. By requiring an employee, male or female, to contend with unwelcome sexual actions or explicit sexual demands, sexual harassment in the workplace attacks the dignity and self respect of the victim both as an employee and as a human being." The Court also noted that sexual harassment was an abuse of both economic and sexual power.

The Supreme Court rejected the Manitoba Court of Appeal's reasoning that sexual harassment could not amount to sex discrimination unless all female employees were sexually harassed. The Court indicated that discrimination does not require uniform treatment of all members of a particular group. It is sufficient if the victim's gender is a factor in the treatment of that individual. "The crucial fact is that it was only female employees who ran the risk of sexual harassment. No man would have been subjected to this treatment."

The Court also indicated that it "strains credulity" to argue that the women were harassed because of their sexual attractiveness and that their gender was irrelevant. "Sexual attractiveness cannot be separated from gender...Because they were women, the appellants were subject to a disadvantage to which no man at the restaurant would have been subject."

Relying on its earlier decision in *Robichaud* as to employer liability, the Court found that Platy Enterprises Ltd., the employer, was liable

for the actions of its employee who was acting in respect of his employment when he sexually harassed the complainants. The cook's actions were work related. He was given authority by the owner and used his position to take advantage of the complainants. The employer in turn did not meet its responsibility to ensure that this power was not abused, even after the complainants complained to him about the harassment.

The Court did not find the Adjudicator's award of damages inordinate in light of the seriousness of the complaints and restored the Adjudicator's award in full.

Supreme Court: Brooks, Allen and Dixon vs. Canada Safeway Ltd.

(Previously reported in 1984, 1985, 1986, 1987 and 1988 Annual Reports)

Background:

In 1983, Susan Brooks, Patricia Allen and Patricia Dixon filed complaints alleging that the employee disability benefit plan provided by the company discriminated on the basis of sex and family status by disqualifying pregnant women from receiving benefits. They alleged that under the terms of the plan, no benefits are payable during a seventeen week period commencing ten weeks prior to the expected week of confinement and ending six weeks after the week of confinement. Ms. Brooks experienced pregnancy-related disabilities and initially received benefits. However, she alleged that ten weeks before the expected confinement, her disability benefits ceased. Ms. Allen and Ms. Dixon experienced pregnancy-related disabilities which commenced within ten weeks prior to their expected weeks of confinement and Ms. Allen continued to experience pregnancy-related disabilities following the birth of her child. All three were denied eligibility for benefits. In contrast, employees who experienced other forms of disability continued to be eligible for benefits under the plan throughout the period of their disability.

Since the investigation revealed an apparent contravention, conciliation was attempted but was unsuccessful. The Commission requested the Attorney-General to appoint a Board of Adjudication to hear and decide the complaints, and Mr. J.F. Reeh Taylor, Q.C. was appointed as Adjudicator. The Adjudication was heard in 1984 and separate decisions were rendered for Brooks in October, 1984 and for Allen and Dixon in 1985. Mr. Taylor ruled that, while the evidence clearly established there was indeed discrimination against the complainants under the terms of the disability benefit plan, the discrimination was by reason of pregnancy and not by reason of sex and family status. He noted that pregnancy was not explicitly in the former *Human Rights Act* as a prohibited ground of discrimination and therefore dismissed the complaint.

The Commission filed an appeal on all three cases which was heard by Mr. Justice Vern Simonsen of the Court of Queen's Bench. In his 1985 decision, he dismissed the appeal, agreeing with the Adjudicator that there was discrimination against the complainants by reason of their pregnancy, but not by reason of their sex or family status.

The Commission further appealed to the Court of Appeal where again the appeal was dismissed in May, 1986. The Commission then sought and was granted Leave to Appeal to the Supreme Court. The Women's Legal Education and Action Fund (LEAF), a national organization dedicated to pursuing women's equality issues in the Courts, requested and was granted intervenor status in the cases. Arguments were heard by the Supreme Court in June 1988.

1989 Update:

The Supreme Court rendered its decision May 4, 1989 ruling that the complete disentitlement of pregnant women during a 17 week period from receiving accident or sickness benefits under the respondent's plan constituted discrimination by reason of pregnancy. Dickson C.J., on behalf of a unanimous Court, found that pregnancy, while not properly characterized as a sickness or an accident, is a valid health related reason, in our society, for absence from work and as such should not have been excluded from the respondent's plan. In distinguishing pregnancy from all other health related reasons for not working, the plan imposed unfair disadvantages on pregnant women.

Overruling its earlier decision in the famous *Bliss* case in 1979, the Court unanimously concluded that pregnancy discrimination is a form of sex discrimination because of the basic biological fact that only women have the capacity to become pregnant. "Pregnancy cannot be separated from gender. The fact, therefore, that the plan did not discriminate against all women, but only against pregnant women, did not make the impugned distinction any less discriminating."

The Court rejected Safeway's argument that excluding pregnancy from the scope of its plan was not a question of discrimination, but a question of deciding to compensate some risks and to exclude others. In so doing, they ruled that under-inclusion may be simply a back-handed way of permitting discrimination. Once an employer decides to provide an employee benefit package, exclusion from such schemes may not be made in a discriminatory fashion.

In finding that Safeway's plan discriminated against pregnant women, the Court recognized the benefits of procreation to society as a whole and cautioned against imposing the costs of pregnancy to half the population. "Combining paid work with motherhood and accommodating the child-bearing needs of working women are ever increasing imperatives. That those who bear children and benefit society as a whole thereby should not be economically or socially disadvantaged seems to bespeak the obvious."

The Supreme Court therefore allowed the appeals and remitted the complaints back to the Adjudicator for a determination of the appropriate remedies.

Note: Complaints were also filed against Dominion Life Assurance Company, the underwriters of the benefit plans. It was agreed at Adjudication that these complaints would be adjourned pending a final determination of the issues in the Canada Safeway complaints.

Queen's Bench: Wadhawan vs. McDonald Supply Limited, McDonald Supply Appliances Limited and Ron Borowski

(Previously reported in the 1986, 1987 and 1988 Annual Reports)

Background:

Jagdish Wadhawan who is of East Indian descent, filed a complaint alleging that during his employment as a service manager, he was subjected to discriminatory terms and conditions of employment in the form of racial harassment by his supervisor, Ron Borowski, and that he was subsequently terminated from his job. He alleged that he was discriminated against because of his race, colour, nationality and ethnic or national origin.

The investigation results appeared to support the complaint. However, since a voluntary settlement could not be negotiated, the Attorney-General was requested to appoint a Board of Adjudication to hear and decide the matter.

Mr. Vic Savino was appointed Adjudicator and hearings were held in 1986. A decision was rendered November 19, 1986. Mr. Savino found Jagdish Wadhawan was subjected to derogatory remarks and insulting language about his East Indian background to the point that it "poisoned his workplace environment". He found that the supervisor, Ron Borowski, was primarily responsible for such remarks, but noted that junior employees also seemed to follow the lead of the senior person in the use of derogatory racial remarks. Mr. Savino also found that Ron Borowski threatened to dismiss Wadhawan and acted on his racially motivated taunt at his first opportunity following a company reorganization when he was given authority to dismiss employees. The Adjudicator found no evidence to substantiate alternate causes for dismissal alleged by the respondent.

In apportioning liability between Borowski, McDonald Supply Limited (MSL) and McDonald Supply Appliances Limited (MSA), Mr. Savino noted that MSL did take some reasonable action to mitigate the problems in the workplace, as they had attempted to deal with the problem through several meetings and had reversed a previous attempt by Borowski to fire Wadhawan. On the other hand, MSA, the successor company who acquired the assets of MSL, knew about the racial harassment and permitted the dismissal, knowing Borowski's racially motivated attitude. The Adjudicator ordered that Borowski and MSA were jointly and severally liable to pay Wadhawan $15,000 in lost wages. For damages to feelings and self-respect, Mr. Savino ordered $2,000 payable by Borowski, $500 payable by MSL and $5,000 payable by MSA.

In 1987, the Respondents filed an appeal to Mr. Savino's decision in the Court of Queen's Bench.

1989 Update:

At year's end, the appeal had not yet been heard.

Queen's Bench: Callen vs. Sticky's Service and Drive Inn (Dauphin)

(Previously reported in the 1986, 1987 and 1988 Annual Reports)

Background:

Kathi Callen had been employed as a waitress at Sticky's Service and Drive Inn in Dauphin, Manitoba. She alleged that throughout her four months of employment there, she was continually harassed by the owner/manager, Mel Stokotelny. She claimed that the sexual harassment consisted of verbal propositions and lewd comments, as well as unwanted kissing and physical touching of various parts of her body. She also alleged that, when the owner became aware she had contacted the Human Rights Commission for advice, he terminated her employment for having done so. The respondent denied any such harassment and indicated it was his habit and practice to engage in "banter" and "teasing". He denied terminating the complainant because she had contacted the Human Rights Commission and maintained that she was let go because she was too slow, talked too much and had a habit of "tip-trolling".

The investigation appeared to confirm the harassment and the termination due to retaliation, so conciliation was attempted, but was unsuccessful. As a result, the Attorney-General was requested to appoint a Board of Adjudication and Douglas Paterson, Q.C. of Brandon, was appointed as Adjudicator. Hearings were held in 1986.

Mr. Paterson rendered his decision on June 12, 1986. He found that Kathi Callen was sexually harassed by Mel Stokotelny, both verbally and physically to the point of "poisoning" her work environment, causing her to feel humiliation and lessened self worth. In addition, he found that submitting to her employer's sexual advances was a condition of maintaining her employment. Regarding the retaliation complaint, Mr. Paterson noted that Mel Stokotelny candidly admitted to tricking Ms. Callen into confirming her telephone complaint to the Human Rights Commission. The Adjudicator found that this evidence, together with the timing of her dismissal following this revelation and the lack of evidence as to any poor work performance, confirmed that she was terminated in retaliation for having contacted the Human Rights Commission.

Since Mel Stokotelny was the "directing mind" of the corporation, Mr. Paterson found him and his corporation jointly and severally liable for lost wages approximating $2,100 and damages for humiliation and lessened self-respect in the amount of $1,000.

The respondent filed an appeal of this decision to the Court of Queen's Bench. A hearing of the appeal set for December 17, 1986 was adjourned pending the outcome of the application for Leave to Appeal to the Supreme Court in the case Govereau and Janzen vs. Platy Enterprises Limited.

1989 Update:

Following the Supreme Court's ruling in *Govereau* and *Janzen* vs. *Platy Enterprises Ltd.*, the respondent withdrew its appeal and honoured the Adjudicator's decision and award.

Supreme Court: Taylor and Western Guard vs. Canadian Human Rights Commission.

Background:

The Commission, through the Minister of Justice of Manitoba, has intervened in this case before the Supreme Court of Canada.

Taylor is the subject of Contempt of Court proceedings for his refusal to abide by a cease and desist order issued by a Federal Human Rights Tribunal against broadcasting hate messages of racism and white supremacy by the telephone in violation of Section 13(1) of *The Federal Human Rights Act* which prohibits the use of telecommunications devices for the spreading of hate messages. Taylor has challenged the contempt proceedings by arguing that the human rights prohibitions violate the freedom of thought and expression guaranteed by Section 2(b) of *The Charter of Rights and Freedoms.* Previous appeals by Taylor at the Trial and Federal Court of Appeal levels have been unsuccessful. The Supreme Court has granted Leave to Appeal on a number of constitutional questions for a determination. Such questions include two on which the Manitoba Government and the Manitoba Human Rights Commission have intervened, specifically:

1. Is Section 13(1) of *The Federal Human Rights Act* consistent with the freedom of thought and expression guaranteed by Section 2(b) of *The Charter;*
2. If it is inconsistent, is it a reasonable limit within Section 1 of *The Charter?*

The Commission has intervened in these proceedings because of concern as to how broadly the Court might construe the concept of "freedom of expression" as a defence. A broad endorsement of the defence, for instance, could affect the nature and extent of current prohibitions with respect to racial, sexual and other forms of harassment, as well as prohibitions against discriminatory signs and notices covered by *The Manitoba Human Rights Code.*

Arguments were heard by the Supreme Court on December 4 and 5, 1989. A decision is not expected before year end.

Sample Complaints

The following are provided as some examples of: types of issues that can be the subject of complaints, the range of dispositions, the types of voluntary settlements that can be achieved and some reasons for dismissal or alternative dispositions.

These examples are no way indicative of the current caseload or the relative numbers of settled and dismissed cases. Statistical information regarding the Compliance Program can be found on page 38.

Each complaint is assessed on its own merits and settlements outlined in the following pages should not be considered as representing a particular trend or current norm.

Services/Ancestry (Native) and Sex (Female)

Allegation:

The complainant, an aboriginal woman, was arrested and taken into custody by two male police officers of a Police Department in Manitoba. During her detainment, she was physically assaulted by the officers. At one point, when they searched her person, she objected to being searched by male officers. One officer poured water on her head and crotch area in the course of which a racially derogatory remark was made. The officers examined her various pieces of identification and they questioned the complainant about the fact that they bore different surnames. She explained that she had had one name change when she remarried a few months earlier and that the other surname was her birth name. One officer remarked "What's the matter? Can't hold on to a man?" The officers also questioned the complainant as to her occupation. When she advised them that she was an Economic Development Officer, they made derogatory comments as to her occupation and that of other aboriginal peoples. During her detention, the complainant asked permission to phone a lawyer on several occasions. When she was finally permitted to make a phone call, she called one individual. As she was describing to this person how she was physically assaulted and how water had been poured on her, one of the officers told her that her time was up and ordered her to get off the phone.

Investigation:

The respondent police officers denied any physical assault claiming that her injuries were sustained in the patrol car as a result of fighting with another individual whom they arrested and detained at the same time. The police officers also denied any racially derogatory or sexist remarks or offensive comments about her occupation or employment during her detention. The officers also denied that they told the complainant to get off the phone when she was allowed her phone call.

Medical reports based on an examination of the complainant on the same day confirmed injuries sustained to various parts of her body. The complainant's accounts to medical staff were consistent with her allegations of physical assault by the police officers. A witness confirmed that he received a phone call from the complainant during the period she was in custody at which time she told him that the police officers physically assaulted her and poured water on her. This witness also confirmed that this phone conversation ended abruptly when the complainant told him that she was being ordered to get off the phone.

The respondent police department had no record of prior complaints from members of the public of a similar nature involving the two police officiers in question.

Disposition:

There was clearly a discrepancy between the complainant's account of the incidents concerning her arrest and subsequent detainment, and the version of the police officers themselves. However, on the totality of the evidence on all facts in dispute and the credibility of all witnesses, the Commission concluded that an adjudicator could find in the complainant's favour. As a result, conciliation was attempted.

Although the respondent police department was not prepared to acknowledge that there had been a contravention of *The Human Rights Act*, there were other aspects of the complainant's detention that it acknowledged were irregular. On that basis, the department was prepared to resolve the complaint. In addition to a monetary payment of $1,500 to the complainant, the department provided her with a letter of apology. It also agreed to issue a police notice to its members that discriminatory treatment, including verbal or physical harassment based upon group factors set out in *The Human Rights Code* is unacceptable conduct and that, where evidence establishes that such conduct has taken place, serious disciplinary consequences shall occur. The respondent police department also agreed to reassess its present cross-cultural training program for entry level police officers as well as the cross-cultural training presently done on an in-service basis for all its members. In this process, it will invite the input of the Commission.

Since both parties were satisfied with this resolution, the complaint was closed as settled.

Services (Denial)/Disability (Hepatitis B)

Allegation:

The complainant had contracted Hepatitis B prior to seeking dental services from the respondent dentist. He disclosed, at that time, that he had had Hepatitis B. Subsequently, when the complainant called for a dental appointment, he was advised that it was the respondent dentist's new policy not to treat patients who had had Hepatitis. The complainant alleged that he was denied a service available to the public because of his physical handicap.

Investigation:

The respondent dentist confirmed that he adopted a policy to no longer treat patients who had had Hepatitis and that he denied further dental treatment to the complainant because of this policy. He maintained that it was based on concern for the safety of the staff and other patients as the dental office was not properly equipped to handle patients who were Hepatitis B carriers. In particular, the slow speed and high speed cable hand pieces used in the dental office were not autoclavable (a method used to kill all life forms and therefore, the most effective form of sterilization). The only other method of disinfecting hand pieces was gluteraldehyde or sodium hypochlorite solutions, both of which are very corrosive to the hand pieces and would therefore require earlier replacement and greater cost to the dental business.

The respondent dentist attempted to refer the complainant to a special clinic in a hospital which was funded by government and was for patients who had had Hepatitis and other infectious diseases. However, he discovered that clinic had lost its funding. (All the hand pieces used by the staff at this institutional-based facility were autoclavable.) In the course of the investigation, a medical opinion was obtained from the Department of Health, Communicable Disease Control, as Hepatitis B is an infectious disease. This expert opinion indicated that the mechanisms of transmission and prevention of both Hepatitis B and HIV are very similar (both are viral infection) and the Department's Guidelines addressing HIV infections and dental care workers would also apply to the management of Hepatitis B. The Guidelines state that hand pieces should be sterilized after each use but, if sterilization is not feasible, these instruments should receive high level disinfection by a chemical agent such as gluteraldehyde. The investigation revealed that many other dentists do not have hand pieces which are autoclavable in their dental offices and they rely on chemical agents for disinfection of hand pieces.

The expert opinion further advised that, although there is still a tendency to treat patients with identified HIV and Hepatitis B infections differently, it is becoming increasingly clear that appropriate precautions must be taken with *all* clients since the majority of infected persons are unidentified. A statement of the Canadian Dental Association on the ethical and legal considerations of treating patients with infectious diseases also indicates that most persons infected with HIV and Hepatitis B virus are unaware of their infected state and that adherence to current infection control procedures (as outlined in the C.D.A.'s recommendations for infection control) can virtually eliminate the risk of transmission of HIV or HBV within the dental office setting. The C.D.A.'s statement also includes a recommendation that institutional-based facilities be utilized to deal with only those patients in advanced stages of infectious diseases who have other medical complications which make delivery of dental care in a specialized facility necessary for proper management of the patient's well-being.

Subsequent to the filing of the complaint, the respondent dentist learned that a new product had become available for dental hand pieces and other non-autoclavable equipment. Although it does not take the place of autoclaving which is recommended by the C.D.A. and the Manitoba Dental Association, it is deemed by the health department to be an acceptable disinfectant. The respondent dentist also advised that he intends in future to purchase autoclavable hand pieces.

Disposition:

Since the evidence confirmed that the complainant was denied dental treatment on the basis of his physical handicap and the respondent could ensure safety of his staff and other patients by using the new chemical disinfectant, conciliation was attempted. The respondent changed his policy and no longer refuses treatment to persons who are Hepatitis B carriers. The respondent also agreed to have his staff attend a seminar on sterilization and hepatitis infection control. Since both parties were satisfied with this resolution, the complaint was closed as settled.

Employment (Benefits)/Mental Disability

Allegation:

The complainant, an organization representing persons with mental disabilities, filed a complaint with the Commission against a large employer and the employees' union alleging that their jointly negotiated long-term disability plan contravened *The Human Rights Act* in that it discriminated against persons who are disabled. The disability plan excluded coverage to employees who became ill due to non-psychotic, nervous or mental disorders as com-

pared to other physical or mental disabilities which had no similar restrictions.

Investigation:

The investigation revealed that there was a differential duration of coverage for non-psychotic disorders as compared to psychotic disorders and other types of disabilities. The respondent employer maintained that such a limitation was bona fide and reasonable based on the additional cost of extending full coverage for such disorders, which would represent .12% of payroll — an undue financial hardship on the employer. However, the evidence submitted was insufficient to establish that the additional cost would indeed pose an undue hardship.

With respect to the alleged joint liability of the respondent union, the investigation revealed that the employer and union simply negotiated the amount of increase to be allotted for the overall disability plan. The plan itself was fully funded by the employer and the particulars of the plan were fully determined by the employer. The union's position was that it wished to have a plan for its members which was non-discriminatory and was willing to achieve same with the employer's co-operation.

Subsequent to service of the complaint, the respondent renegotiated the plan to provide the coverage for non-psychotic disorders for twelve (12) months only following date of total disability. However, this change continued to maintain a differential as compared to other forms of disability.

Disposition:

Since the plan distinguished between two types of disabilities and treated one unfavourably, it appeared to be discriminatory. It also appeared that the distinction was not bona fide and reasonable, since evidence revealed that the respondent could provide a non-discriminatory plan without undue hardship.

The Commission requested that the respondent remove the distinction and provide a non-discriminatory plan to its employees. This was achieved through negotiation between the Union and the employer, such that full coverage was immediately extended for non-psychotic nervous and mental disorders with restrictions. Since all parties considered the settlement satisfactory, the Commission closed the file as settled.

Employment (Terms and Conditions, Termination)/ Sexual and Racial Harassment

Allegation:

The complainant, an aboriginal woman, prepared meals in a fast food restaurant which was part of a national chain. Her supervisor began harassing her sexually and racially shortly after she began work. He would grab her from behind, make obscene gestures, and try to get her to go with him to a back room for sexual activities. He also called her a squaw. She complained to management, but no action was taken. Arguments ensued with her supervisor, and they were both put on probation. After she broke probation by arguing with him again about the harassment, her employment was terminated.

Investigation:

The investigation revealed that the woman did suffer regular sexual harassment as alleged in the complaint. Although all the managers backed up the supervisor's denial of the allegations, waitresses and other staff confirmed the allegations. It was also acknowledged that although she complained, no action was taken. The investigation also revealed that the harasser had in fact been twice warned about sexually harassing waitresses. The investigation also confirmed he had called her a squaw.

Disposition:

Since the evidence appeared to support the complainant's allegations of discrimination, an attempt was made to conciliate the complaint. The respondent offered a settlement of $1,500 for lost wages and personal damages which was accepted by the complainant. Since all parties were satisfied with this resolution, the Commission closed the file as settled.

Housing (Denial)/Criminal Record

Allegation:

The complainant applied for subsidized housing in a public housing complex for the elderly.

The respondent agency, upon checking the man's background, discovered he had been incarcerated as a result of being convicted of sexually assaulting his 13 year old mildly retarded step-daughter.

The agency denied the complainant's application for tenancy due to his criminal record. The complainant alleged he was discriminated against without regard to his personal merits

and based on the class to which he belonged, ie. persons with a criminal record.

Investigation:

The investigation revealed that the complainant was convicted to three years in the penitentiary for sexually assaulting a thirteen year old mildly retarded step-daughter. The respondent maintained that the particular housing complex for which the complainant applied, was occupied primarily by elderly women who were vulnerable on account of suffering from various physical and mental limitations and that, in such circumstances, the risk to other tenants justified the complainant's rejection on bona fide and reasonable grounds.

The Commision sought expert professional opinions as to the potential risk posed to the other occupants given the complainant's nature of offence.

Professional consultants indicated that the complainant persistently denied his guilt and refused to undergo treatment and/or assessment which would confirm or deny any likelihood of rehabilitation. In these circumstances, given the vulnerability of the occupants in the particular housing complex, it appeared that the respondent's rejection of the complainant was bona fide and reasonable.

Investigation also confirmed that, except in these particular circumstances, the respondent had no policy or practice of denying applicants solely on the basis of their having a prior conviction for a criminal offence.

Disposition:

The Commission determined there was no contravention of *The Human Rights Code* since the denial of housing was based on bona fide and reasonable cause, given the vulnerability of the elderly tenants residing in the housing complex and the respondent's responsibility for their safety. The complaint was accordingly dismissed.

The Commission did, however, emphasize that their decision was limited to the particular circumstance of this case and that their decision was not intended to be a guide to condone the refusal to rent to any or all persons with criminal records, nor specifically, to persons with criminal records for sexual offences.

There is some indication based on professional advice, that the passage of time could reduce the threat of recidivism of the particular behaviour attributed to the complainant.

Employment (Promotion)/Sex (Female) and Age (Over 50)

Allegation:

The complainant was a female member of a police department in Manitoba who held the rank of constable. When she first joined the department many years earlier, women were classified as policewomen and as such, they were not included in the rank structure. Women at that time were not eligible to write exams for promotion to higher ranks. Some 15 years later the police department did change its classification system to include female officers in the same rank structure as males. The complainant applied for promotion repeatedly following this change but each time she was unsuccessful. Male constables were promoted over her, some of whom had less experience and less diverse experience in the various facets of police work. The complainant applied again in a promotion competition for the rank sergeant II in which all successful candidates were once again males. At that time there were no female police officers in the department who had been promoted to a rank above that of constable. The complainant alleged that she had been denied this most recent promotion on the basis of her sex and age (ie. over 50).

Investigation:

The investigation revealed evidence of historic discrimination against women within the police department. For example, subjectivity in the performance rating and promotion systems; traditionally female assignments to divisions such as Youth or Vice; a hostile and poisoned work environment due to discriminatory statements and at times harassment from both supervisors and co-workers; and lack of opportunities to acquire supervisory experience through appointments to acting supervisory ranks.

With respect to the complainant herself, the investigation revealed that she suffered the effects of historic discrimination throughout her policing career and it confirmed that she had been ineligible for promotion for a significant portion of her career (15 years) because of the department's previous classification system which rendered females ineligible for promotion. However, her lack of success in the competition which was the subject of this complaint appeared to be unrelated to this historic disadvantage. The investigation revealed that although she was one of several well-qualified candidates she was nevertheless rated lower than the best qualified candidates who were males based primarily on the written examination component in the promotion system which has no detectable adverse affect on women.

Disposition:

The Commission found the police department's failure to promote the complainant in the competition in question to be non-discriminatory and dismissed her individual complaint. Notwithstanding this disposition of her case, the Commission expressed serious concern about the evidence of systemic discrimination obtained in the course of the investigation. The Commission firmly believes that effective and immediate remedial measures must be taken to achieve employment equity for women at all levels of the police force. The Commission requested that the police department advise as to what remedial measures it will be taking and when in each of the areas identified in view of the serious underrepresentation of women, the limited impact of the current equal employment opportunity program and the historic duration of current inequities. Ongoing discussions with the police force are in place to ensure an effective remedial employment equity program for women.

Employment (Termination)/Disability

Allegation:

The complaint, a Northern resident, alleged that he had been discriminated against because of his physical disability in that his employment was terminated because he had suffered a mild insulin attack while at work.

Investigation:

The investigation revealed that the complainant was a diabetic and was taking insulin to control his diabetes. Shortly after the complainant had commenced employment, he had suffered an insulin attack and had been found lying on the floor by a fellow worker. As a result of this attack, the employer had given the complainant two weeks notice since the employer felt that there was a danger presented by a possible attack while the complainant was operating some heavy equipment. The complainant appealed the employer's decision which resulted in a mutual agreement being reached between the complainant and the employer whereby the employer would keep the complainant employed as long as he took care of himself and did not have another attack while at work.

Approximately one month later, the complainant suffered another attack while at work which resulted in his termination.

The respondent felt that they were justified in their decision to terminate the complainant's employment because they felt that he was a safety risk to himself as well as a safety risk to other employees and also the public in general. The investigation revealed that the complainant would be required to spend approximately one-third of his working time alone. In addition to the safety hazard, even if no one was injured, there was a definite possibility of damage to the premises by the equipment operated by the complainant should he suffer an attack while operating the equipment.

Because the employer's work force was so small, it did not appear reasonable to expect the employer to accommodate the complainant since this could only have been done if another person was hired. Furthermore, the complainant's physical disability affected a major portion of the complainant's duties.

Disposition:

After reviewing the investigation findings, the Commission felt that the respondent was justified in terminating the complainant's employment on the basis that the complainant's disability was a reasonable disqualification from that particular position of employment. Accordingly, the complaint was dismissed.

Services (Denial)/Physical Disability (Access)

Allegation:

The complainant was a physically disabled person using a wheelchair. Upon attending the respondent's store she was unable to shop on her own as the aisles throughout the store were not wide enough to accommodate her wheelchair.

Investigation:

The investigation confirmed that the complainant had difficulty accessing the store. There are turnstyles which inhibit the passage of wheelchairs into the store and entry to the store from the exterior can only be managed with the assistance of another person. The door that gives access to the store opens inwards and it is impossible for a person in a wheelchair to operate. Although there is sufficient space at the front of the store, many of the aisles are very narrow and further inhibit access to view or purchase goods offered for sale. The respondent store is a retail merchandising store with 12 outlets in Manitoba. The store sells by volume and therefore it is necessary for them to display as many goods as possible.

Disposition:

The respondent, when apprised of the situation, immediately offered to voluntarily resolve the complaint. The respondent agreed to renovate the store to allow the complainant access. The respondent also consulted with the Canadian Paraplegic Association to assure that the changes made were appropriate.

The respondent removed turnstyles at several of their other stores in the province and rehung the doors to give easier access to the disabled. The respondent also indicated that any new stores would be designed so that disabled persons would have easy access.

The Commission commended the respondent for taking the initiative to improve access for the disabled at its other stores in the Province. Since all parties were satisfied with this resolution, the case was closed as settled.

Services/Disability (Back Problem)

Allegation:

The complainant who has a disabling back injury was in receipt of disability benefits under a public income replacement scheme. He alleged such benefits were discontinued when he reached age 65 and that this constituted discrimination because of age.

Investigation:

The investigation revealed that the complainant had received benefits under an income replacement scheme. This scheme is intended to replace income earned from employment as a result of a disability which interrupts employment. The complainant's benefits were discontinued at age 65 because it was the respondent's policy to discontinue assistance to all recipients when they obtain age 65. Subsequent to service of the complaint, the respondent voluntarily adopted a new policy which required that objective factors should be used for determining termination of working life instead of terminating benefits on the assumption that the working life of benefit recipients would cease at age 65. Under the new policy, age is used only where there is lack of evidence of these objective factors.

The respondent subsequently examined the complainant's situation in light of this new policy and benefits were extended to the complainant to age 67. The respondent found insufficient evidence to substantiate a probability of continuous employment past this date and therefore was not prepared to extend the benefits any further.

Disposition:

The Commission considered the reasonableness of using age as the sole determining factor for termination of benefits, both in regard to employee benefit plans and other income replacement schemes. The Commission decided that age should be used only in the absence of alternative objective evidence as to termination of working life such as was provided for in the respondent's new policy.

With respect to this particular complaint, the facts revealed that benefits were ultimately extended beyond age 65. Although the complainant was not satisfied with the duration of the extension, that considering all the objective evidence available as to the complainant's likely termination of working life, the Commission deemed the duration of the extension as a reasonable settlement of the complaint, and no further action was taken.

Services (Denial)/Physical Disability

Allegation:

The complainant who was diagnosed as having multiple sclerosis, had his driver's licence automatically suspended on his diagnosis as set out in regulations set out by *The Highway Traffic Act* of Manitoba. It was the complainant's position that the classification stereotyped all persons with such a disability without permitting an individual assessment of his medical condition and his ability to drive, and as such, was discriminatory on the basis of his physical disability in violation of *The Human Rights Code.*

Investigation:

The investigation established that the respondent, on being advised by the complainant's physician that he had been diagnosed as suffering from multiple sclerosis, automatically suspended the complainant's license in accordance with the regulations. Although the complainant could appeal the decision to the Medical Review Committee on payment of the required fee, the suspension was immediate and remained in force until lifted by the Committee.

Disposition:

Since the evidence appeared to support the complainant's position that he was suspended from driving based on his physical disability without any regard to his individual medical assessment, conciliation efforts were initiated. In response to conciliation attempts, the complainant was reinstated in his former classification. Further, a review of the current procedures followed by the respondent was undertaken. It was deemed that the current regulations were discriminatory in that assumptions were made as to the risks resulting from various types of disabilities without individual assessments as to the exact nature of the disability and the resulting risk, if any, posed by the driver. At the time of this report, the regulations in question are under study, to allow a more immediate individualized assessment prior to suspension of a driver's licence. Since the complainant expressed his satisfaction with the disposition of his complaint, the case was closed as settled.

Employment (Termination)/ Age (60 Years)

Allegation:

The complainants alleged that they had been discriminated against when they were forcibly retired from their employment as police inspectors on attaining the age of 60 years. The complainants alleged that this decision was made solely on the basis of their age in that both their physical and mental health was good and their job performances were satisfactory.

Investigation:

The investigation determined that the respondent had an employment policy and by-law which directed that employees will be retired from their employment on attaining the age of 60 years. Although the respondent acknowledged that the complainants' mental and physical health was in good standing and their ability to carry out their duties was not in question, enforcement of the retirement policy was required in compliance with the municipality's by-law.

Disposition:

Since the evidence appeared to support the complainants' allegations, conciliation attempts were made by Commission staff. The employees were offered reinstatement in their former positions of employment and compensated in the amounts of $4,784.26 and $4,109.95 for loss of wages and benefits that they would have incurred had they continued in their employment from the date of their retirement. One of the complainants was reinstated to his full duties at his request.

Both complainants were satisfied with the disposition of their complaints, and accordingly, the complaints were closed as settled.

Services (Denial)/Family Status

Allegation:

The complainant was an employee of a child care centre. She alleged that her employer discriminated against her and other employees on the basis of family status and without reasonable cause in that employees of the child care centre were prohibited from enrolling their children.

Investigation:

The investigation revealed that the respondent had initiated the policy in the honest belief that it was in the best interests of all children concerned not to permit an employee's child in the Centre. They were concerned that an employee's emotional involvement with her child would interfere with the quality of service provided. In particular, they feared that an employee would show their own child preferential treatment (in terms of attention, discipline, etc.) and the other children would suffer accordingly. They were also concerned that, in cases where there was no preferential treatment, the employee's child would still have difficulty adjusting to the parent's change of role between that of parent and that of employee in terms of their availability. Should the enrollment of an employee's child not work out, the day care feared the child would suffer rejection.

However, expert opinion received by the Commission from a registered clinical psychologist revealed that whether any such problems developed depended on several factors including the age and temperament of the child, the relationship between the child and the parent, including in particular the presence, degree and resolution of separation and control issues and the relationship and communication between the parent-staff and the rest of the staff. The expert maintained that these problems are not insurmountable if there is planning, staff policies, and open communication between parents, staff and the Board of Directors.

Disposition:

On the basis of the evidence presented there was insufficient evidence to show that the respondent's position was bona fide and reasonable. Further evidence was requested failing which conciliation was proposed. The respondent agreed to resolve the matter by revoking its policy prohibiting staff from enrolling their children. Procedures were adopted for solving problems that could arise and guidelines were set out for the visiting of an employee's child during breaks.

Employment (Training, Terms & Conditions)/Ancestry

Allegation:

The complainant, a Northern female, was employed as a teacher assistant with a Northern school division. She applied for an opportunity to be trained as a teacher and was originally recommended by her employer. However, the recommendation was subsequently revoked in favour of two aboriginal candidates. The complainant alleged she was denied equal opportunity in training and advancement because of her ancestry.

Investigation:

The investigation confirmed the complainant was advised that the teacher training program had been designed for aboriginal people and since she was not an aboriginal, her application was rejected. The respondent claimed that the teacher training program for which she applied was an affirmative action program. The respondent advised that the objectives of the program were to:

- provide teacher education for native teacher aides in order to provide access for native people into the teaching profession;
- provide this education and training for native people who are not able to leave their home communities for long periods of time due to their family commitments and job requirements;
- provide a program of studies relevant to the expressed needs of the constituency and meeting all university requirements;
- provide an extended pre-service professional development relevant to the teacher aide's/student teacher's work assignment and professional training.

The investigation revealed that in previous years, the School Division had selected aboriginal people for these teacher training positions with the odd exception. Exceptions were made only in those communities where there was a high number of non-aboriginal people residing. Since the complainant was employed as a teacher aide in a community which was almost entirely aboriginal, the School Division decided that preference for aboriginal applicants for the two positions available was warranted given the objectives of the training program.

Disposition:

After reviewing the respondent's defence, the Commission considered the training program to be a special program within the meaning of Section 11 of *The Human Rights Code* on two grounds:

1) That the objective of the Program is to ameliorate the disadvantaged status of aboriginal people in Northern communities by providing them with employment opportunities in the teaching profession, and;
2) That the teacher training program achieves or is reasonably likely to achieve that objective.

The Commission also noted that an ancilliary objective of the Program is to improve the education opportunities of aboriginal children. As such, the training and employment of aboriginal people as teachers in communities with a significant aboriginal population also appears to be bona fide and reasonable to achieve that purpose. For these reasons, the School Division's selection process was not considered to be a violation of *The Human Rights Code* and the complaint was dismissed.

Services (Social Assistance)/ Marital Status, Ancestry, and Ethnic or National Origin

Allegation:

The complainant was married to a black man from Ghana, Africa. She and her spouse applied for social assistance from a town located in south-western Manitoba. The complainant alleged that during an interview with the supervisor of social services, she was asked if her husband had married her to stay in Canada and that comments were made like "those guys come here and marry girls so they can stay in Canada". The complainant was refused assistance and was advised that it was her responsibility to support her husband as she had sponsored him into the country. She alleged she was denied social assistance and discriminated against in the course of applying for assistance because of her husband's ancestry and national origin, and her marital status in that she was married to someone whose ancestry and national origin was non-Canadian.

Investigation:

The respondent denied that any discriminatory comments were made to the complainant. They further indicated that their refusal to provide assistance was bona fide and based on *The Immigration Act* which prohibits provision of social assistance to sponsored immigrants. As there were no witnesses to the discriminatory comments and no additional corroborating evidence, this allegation could not be substantiated. The investigation revealed, however, that *The Immigration Act* and regulations do not prevent assistance to sponsored immigrants and, as such, the respondent's defence was disproved.

Disposition:

As the investigation disproved the respondent's defence to the complaint, conciliation was initiated. The respondent agreed to change their policy so that eligibility criteria for social assistance currently based on financial need was applied equally to all applicants regardless of their immigration status. As both parties were satisfied with this resolution, the complaint was closed as settled.

Services (Conditions)/Ancestry (Native)

Allegation:

The complainant, an aboriginal Canadian, states that while attending a local night club, he was subjected to racist and sexist jokes which were not only offensive to his own disposition but to persons of other nationalities.

The complainant alleged that the telling of such jokes in a public place is both degrading and humiliating and constituted discrimination on the basis of his ancestry in the course of providing him service.

Investigation:

The respondent advised that as part of a promo-

tion they had a joke telling contest in which the patrons participated.

The respondent acknowledged that the type of jokes identified by the complainant were offensive and that several patrons, both aboriginal and otherwise had voiced objections on the occasion of the complainant's visit.

Disposition:

The onus is on the respondent provider of service to ensure that the provision of service is in an environment free of racial or sexual harassment. When it was brought to the attention of the respondent that the joke telling was offensive to persons on the grounds of ancestry, they accordingly discontinued the contest.

The respondent offered the complainant a letter of apology further advising the Human Rights Commission in writing that any future contests would be fully supervised and screened by management to ensure its compliance with the principles and spirit of *The Human Rights Code*. Since all parties were satisfied with this resolution, the case was closed as settled.

Employment (Termination)/Marital Status

Allegation:

The complainant was employed as a parking lot operator and was terminated from her employment approximately one week after the respondent had terminated her spouse's employment. The complainant who had been employed by the respondent for a period of two years was known to be a responsible employee. However, upon her termination, the respondent refused to provide an explanation for their decision to terminate her employment. She alleged her termination was discriminatory on the grounds of her family status and that she was let go because she was married to another employee who had been released by the employer.

Investigation:

In response to the complaint, the respondent stated that the complainant was terminated because of poor work performance. The investigation revealed no evidence of poor work performance. The evidence revealed that the complainant's husband who was also employed by the company, was terminated because he violated company policy. The respondent terminated the complainant as well because of her marital status.

Disposition:

The respondent compensated the complainant accordingly for lost wages in the amount of $3,457.08 incurred as a result of her termination and further, made known in writing a declaration of compliance to the Human Rights Commission. The complainant did not request reinstatement in her former position of employment, and expressed satisfaction with the disposition of her complaint. Accordingly, the case was closed as settled.

Employment (Harassment)/Ancestry (Black)

Allegation:

The complainant is a black person who was hired by the respondent as an Apprenticeship Welder. The complainant alleged that shortly after commencing employment and on a continuing basis, he was subjected to racial harassment (racial slurs, innuendo and physical threats), by various supervisors and co-workers. He also alleged he was treated differentially due to his colour. Each time that the complainant brought the matter up with the management, no effective action was ever taken against the harassers to stop the harassment. The duress that he felt as a result of this continuous harassment forced him to quit his employment.

Investigation:

The evidence revealed that the owner himself never mistreated the complainant personally. However, the evidence supported the allegation that the complainant was racially harassed by foremen and co-workers on a continuing basis. Witnesses confirmed that while the respondent was not aware of the whole situation, he knew or ought to have known enough to take remedial action. Whenever the complainant complained of discrimination to the respondent, the owner merely attempted to change the supervisors, believing the conflict to be a result of personality clash. Witnesses confirmed that the respondent did not exercise any discipline towards the "old-timers" believing he could not afford to lose them. Instead, the respondent chose to ignore the whole issue of racial discrimination even after it was brought to his attention. Given the nature of the harassment and the employer's unwillingness to take reasonable steps to terminate it, it appeared that the complainant's work environment was poisoned by the constant name-calling and other racial incidents and this contributed to the complainant terminating his employment. As a result, despite efforts to obtain alternate employment, the complainant remained for a period of time. He ultimately secured employment elsewhere, but at a lower rate of pay.

Disposition:

The evidence appeared to support that racial harassment occurred both by supervisors and co-workers. The onus of maintaining a harassment free work environment rests with the employer and the evidence also appeared to support the complainant's position that no effective action was

taken to terminate the harassment. As a result, conciliation efforts were made to reach a voluntary settlement of the complaint. The complaint was ultimately settled to the satisfaction of all parties when the respondent agreed to pay the complainant the sum of $2,500.00 as general and special damages and provide him a personal apology. In addition, the respondent gave an undertaking to hold a workshop for Foremen, Supervisors and Managers on *The Manitoba Human Rights Code* and, in particular, the protections from harassment in the workplace on the basis of group characteristics. Staff from the Manitoba Human Rights Commission agreed to conduct this workshop.

Since a settlement was reached to the mutual satisfaction of both parties, the Commission closed the file as settled.

Employment (Termination)/ Perceived Physical Disability

Allegation:

The complainant applied for a job as a mechanic with a company in rural Manitoba which built and maintained its own farming equipment. Although the complainant stated on his application form that his health was excellent, during a post-hiring interview he noted that he had had a motorcycle accident which gave him some pain in one of his knees. The company asked him to see its physician, who reported back that the complainant had early arthritis and might have trouble sometime in the future lifting heavy objects. The complainant's employment was then terminated. Although he provided letters from his family physician and a specialist that he was in good health, the company refused to reconsider his termination. He then filed a complaint alleging discrimination in employment due to perceived physical disability.

Investigation:

The investigation revealed that the complainant worked for two weeks for the respondent with no indication of any problems with his knee. His work was considered satisfactory. Although the Company double-checked with its physician, it did not contact the complainant's physicians. Although the respondent stated that the complainant was not rehired because there were no vacancies, investigation showed that at least three vacant positions arose within the following twelve months, for all of which the complainant was qualified.

Disposition:

The Commission determined that the respondent did not give reasonable consideration to the complainant's evidence from his physicians about his knee. Further, the respondent made assumptions about his perceived knee problem rather than considering whether or not he had actual problems while doing the work. During conciliation efforts, the respondent agreed to settle the complaint with a payment to the complainant of $1,000 for general damages due to the complainant's humiliation and the financial difficulties created for him by his abrupt termination. An additional $1,260 was paid, representing lost wages until he had found another job. A workshop on *The Human Rights Code* was held for management, and the respondent furnished the Commission with a letter indicating future compliance with *The Code*. Since all parties were satisfied with this resolution, the Commission closed the file as settled.

Services (Denial)/Marital Status, Source of Income

Allegation:

The complainant who belongs to the military, attempted to purchase some items at a store located in central Manitoba. When she went through the check out and provided a personal cheque, a manager refused to accept the cheque based on the fact that her husband had previously written an N.S.F. cheque. The complainant alleged that the issue of the cheque had been resolved previously and that the denial was the result of ill feelings toward military personnel that had surfaced when the closure of the local armed forces base was announced. She alleged the respondent's actions were discriminatory on the grounds of her source of income (ie. military) and her marital status (ie. she was married to someone who had written an N.S.F. cheque).

Investigation:

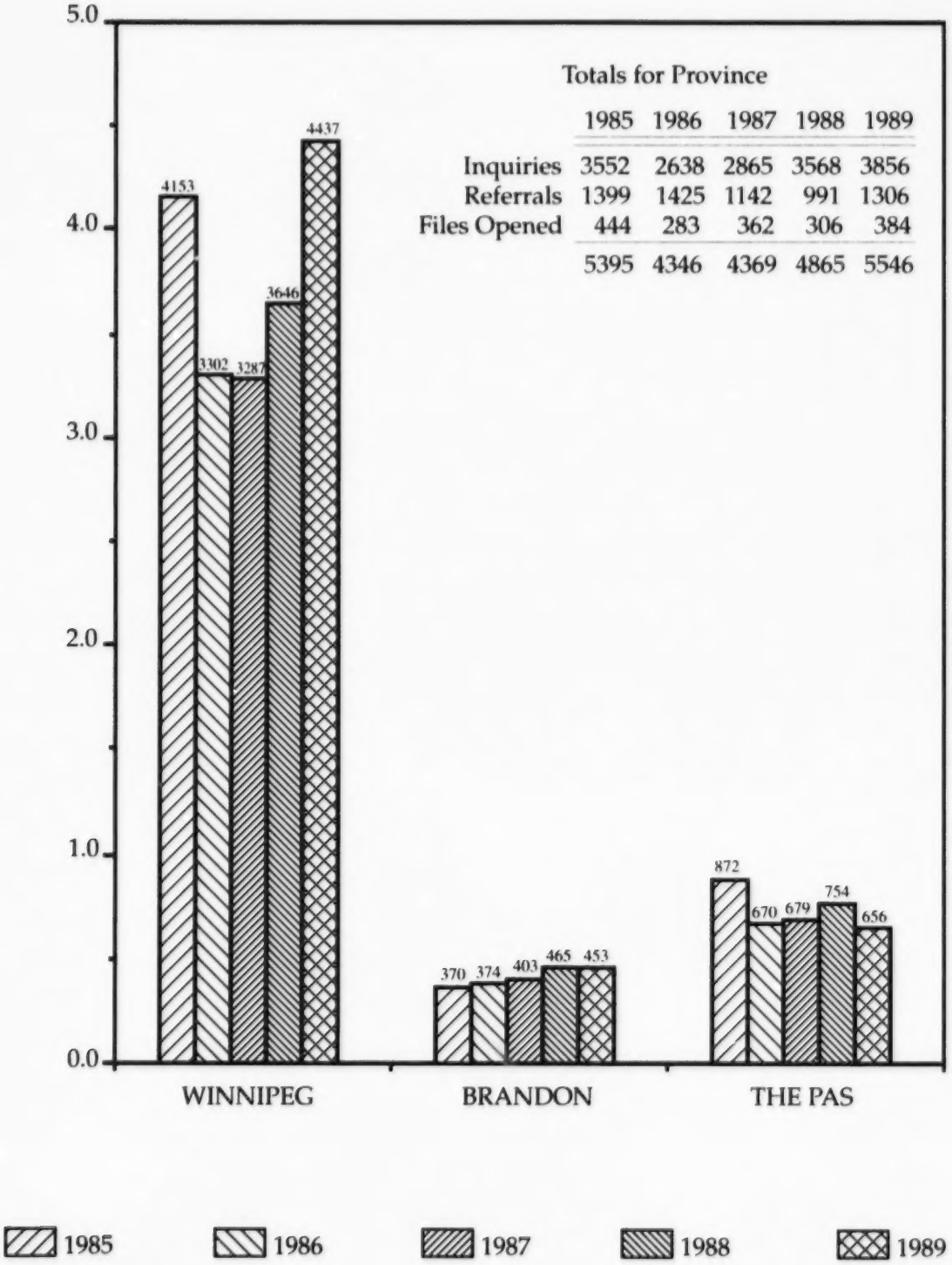
The respondents denied their refusal to accept the cheque from the complainant was based on marital status or source of income. They indicated that they were unaware the complainant belonged to the military and maintained that the cheque was refused based on the fact the complainant was writing on a joint account where one party had previously written an N.S.F. cheque. The respondents noted that had the cheque been on a separate account, the complainant would have been allowed cheque cashing privileges. They further indicated that if the complainant's spouse had resolved the issue, this had not been documented by the former manager, but they would be more than willing to review the matter.

Disposition:

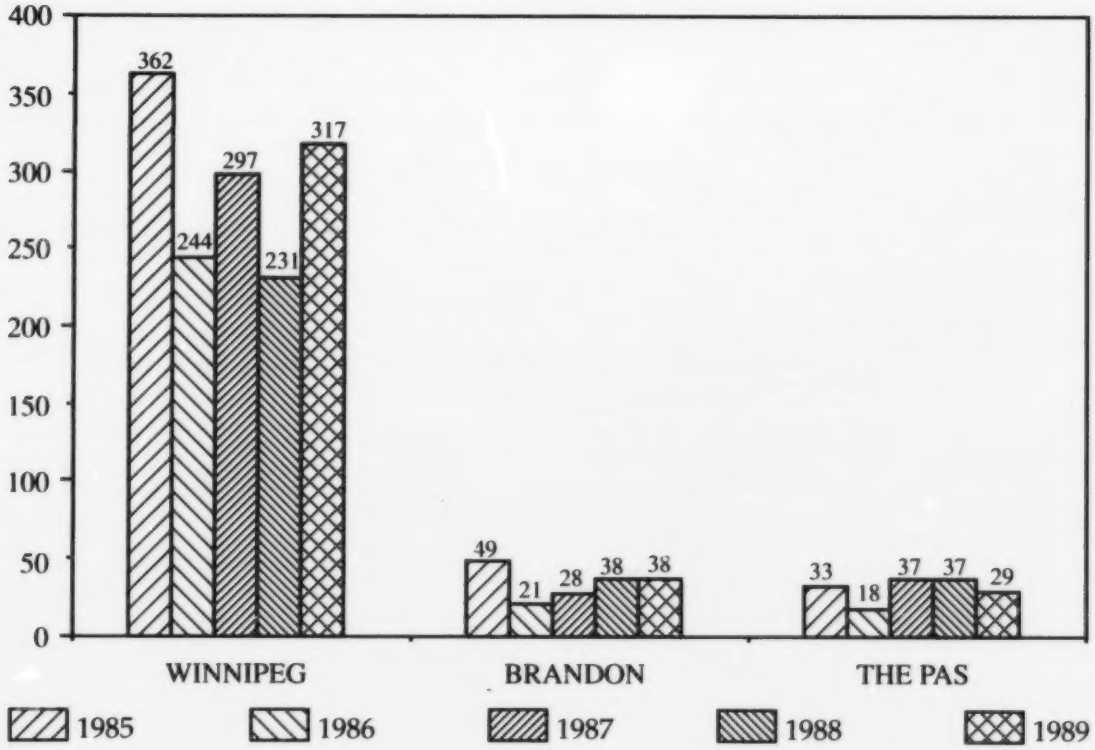
The Commission determined that while it is discriminatory to deny cheque cashing privileges or other types of credit to a person based on the credit record of his or her spouse, it was non-discriminatory where a party to a joint account had written an N.S.F. cheque previously, as both parties are equally responsible for a joint account. Accordingly, the complaint was dismissed.

1. INTAKE STATISTICS

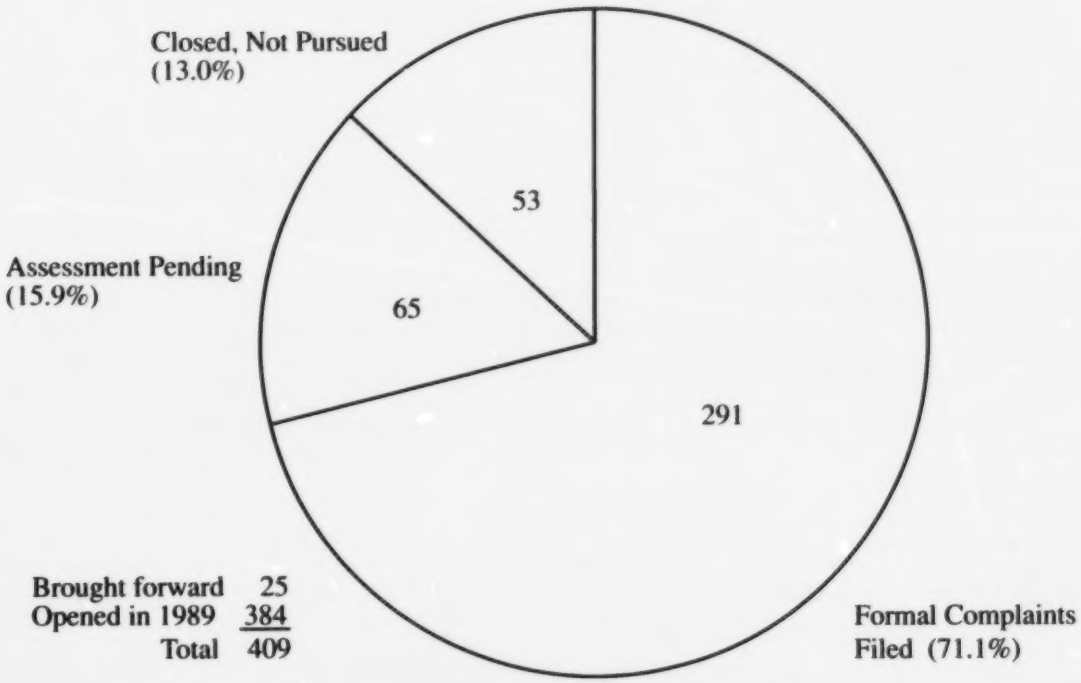
TOTAL INTAKE CONTACTS BY REGION 1985-1989



POSSIBLE COMPLAINT FILES OPENED BY REGION 1985-1989



PRELIMINARY ASSESSMENT OF FILES OPENED 1989



DISTRIBUTION OF FILES OPENED BY LOCATION 1989

Arborg	1	Napinka	1
Ashern	1	Neepawa	2
Brandon	28	Niverville	1
Camperville	1	Portage la Prairie	3
Carman	1	Pinawa	1
Dauphin	3	Plum Coulee	1
Gillam	1	Reston	1
Grand Rapids	2	Roblin	1
Hadashville	1	Russell	1
Ilford	1	Selkirk	2
Inwood	2	Souris	1
Lac du Bonnet	2	Spence Lake	1
Lockport	1	Sundance	2
Lynn Lake	1	The Pas	6
Minnedosa	1	Thompson	14
Moose Lake	1	Winnipeg	296
Morden	1	Woodlands	1
Total			384

Note: Location is designated as the community in which the alleged contravention occurred.

2. COMPLIANCE STATISTICS

Note: (a) Many complaints are based on more than one ground of discrimination. This will affect the totals in some of the following tables.

(b) The Statutory Category "Other" includes contracts and purchase of property.

(c) The Grounds Category "Other" includes group factors not specifically cited in The Code.

(d) The figures for 1985-1987 in the table "Formal Complaints Filed by Grounds" have been adjusted to reflect the new Human Rights Code.

FORMAL COMPLAINTS FILED BY GROUNDS AND STATUTORY CATEGORY 1989

Statutory Category	Total Files	Ancestry	Nat/Ethnic Origin	Marital/Fam Status	Disability	Sex	Age	Religion	Political Belief	Source of Income	Sexual Orientation	Other
Employment	193	32	14	25	60	67	18	9	5	1	3	10
Housing	21	7	2	11	3	3	1	0	0	2	1	0
Services	61	21	4	6	16	5	5	0	2	8	0	6
Other	6	1	0	1	2	0	3	0	0	0	1	0
Reprisals	10	0	0	0	0	0	0	0	0	0	0	0
	291	61	20	43	81	75	27	9	7	11	5	16

FORMAL COMPLAINTS FILED BY GROUNDS 1985-1989

GROUNDS	1985		1986		1987		1988		1989	
Ancestry	87	23%	60	24%	79	26%	49	19%	61	21%
National/ethnic origin	78	21%	48	20%	71	24%	18	7%	20	7%
Marital/family status	68	18%	35	14%	55	18%	37	14%	43	15%
Disability	79	21%	45	18%	72	24%	57	22%	81	28%
Sex	96	26%	67	27%	60	20%	54	21%	75	26%
Age	49	13%	39	16%	39	13%	34	13%	27	9%
Religion	18	5%	9	4%	4	1%	8	3%	9	3%
Political Belief	0	0%	2	1%	3	1%	7	3%	7	2%
Source of Income	26	7%	17	7%	20	7%	11	4%	11	4%
Sexual Orientation	—		—		—		10	4%	5	2%
Other	14	4%	14	6%	9	3%	24	9%	16	5%
Total Complaints Filed	374		245		302		262		291	

FORMAL COMPLAINTS FILED BY STATUTORY CATEGORY 1985-1989

STATUTORY CATEGORY	1985		1986		1987		1988		1989	
Employment	224	60%	159	65%	175	58%	158	60%	193	66%
Housing	62	16%	43	18%	45	15%	24	9%	21	7%
Services	73	20%	35	14%	71	23%	69	27%	61	21%
Other	15	4%	8	3%	11	4%	11	4%	6	2%
Reprisals									10	4%
Total	374	100%	245	100%	302	100%	262	100%	291	100%

Definitions

Disposition of Formal Complaints

Dismissed:
Where the evidence is insufficient to substantiate the allegation; or there is no contravention of *The Code;* or the complaint is frivolous or vexatious.

Settled:
Where the terms of settlement are satisfactory to both the Complainant and Respondent.

Unresolved:
Where a reasonable settlement offer is made by the Respondent but rejected by the Complainant.

Other:
Includes a complaint that has been withdrawn or abandoned by the Complainant, or terminated for some other reason.

Referred:
Where a complaint is not settled, dismissed or disposed of in any other way indicated above, the Commission may request that the Minister appoint a Board of Adjudication to hear and decide the matter; or recommend that the Minister commence a prosecution.

DISPOSITION OF FORMAL COMPLAINTS BY STATUTORY CATEGORY 1989

STATUTORY CATEGORY	DISMISSED		SETTLED		UNRESOLVED		REFERRED*		OTHER		TOTAL (100%)
	#	%	#	%	#	%	#	%	#	%	
Employment	82	59%	29	21%	3	2%	4	3%	22	16%	140
Housing	19	53%	6	17%	1	3%	0	0%	10	28%	36
Services	35	54%	10	15%	2	3%	6	9%	12	18%	65
Other	5	83%	1	17%	0	0%	0	0%	0	0%	6
Reprisals	2	67%	1	33%	0	0%	0	0%	0	0%	3

DISPOSITION OF FORMAL COMPLAINTS FILED BY GROUNDS 1989

GROUNDS	DISMISSED		SETTLED		UNRESOLVED		REFERRED*		OTHER		TOTAL (100%)
	#	%	#	%	#	%	#	%	#	%	
Ancestry	45	67%	9	13%	0	0%	1	1%	12	18%	67
National/Ethnic Origin	13	62%	3	14%	0	0%	1	5%	4	19%	21
Marital/Family Status	15	36%	12	29%	1	2%	6	14%	8	19%	42
Disability	33	60%	15	14%	0	0%	3	5%	6	11%	55
Sex	17	36%	12	26%	1	2%	4	9%	13	28%	47
Age	20	57%	7	20%	1	3%	1	3%	6	17%	35
Religion	3	75%	0	0%	0	0%	0	0%	1	25%	4
Political Belief	2	100%	0	0%	0	0%	0	0%	0	0%	2
Source of Income	6	46%	0	0%	2	15%	0	0%	5	38%	13
Sexual Orientation	1	20%	0	0%	0	0%	3	60%	1	20%	5
Other	16	84%	2	11%	1	5%	0	0%	0	0%	19

DISPOSITION OF FORMAL COMPLAINTS 1985-1989

DISPOSITION	1985		1986		1987		1988		1989	
	#	%	#	%	#	%	#	%	#	%
Dismissed	125	47.9%	173	60.1%	119	50.0%	130	52.0%	143	57.2%
Settled	62	23.8%	39	13.5%	39	16.4%	41	16.4%	47	18.8%
Unresolved	7	2.7%	4	1.4%	2	0.8%	3	1.2%	6	2.4%
Referred*	20	7.7%	10	3.5%	13	5.5%	1	0.4%	10	4.0%
Other	47	18.0%	62	21.5%	65	27.3%	75	30.0%	44	17.6%
Total	261	100.0%	288	100.0%	238	100.0%	250	100.0%	250	100.0%

*See Definitions, above and Summary Report of Legal Proceedings, page 21.

ADVISORY OPINIONS ISSUED 1988-1989

	1988	1989
Opinion Issued:		
Special Program	1	4
Bona Fide & Reasonable Requirement	4	0
Reasonable Accommodation	0	0
Other	0	0
No Opinion Issued	2	2
Total Files Closed	7	6

Note: In some cases more than one basis for the exception was cited. Only one is recorded for statistical purposes. (See Summaries of Advisory Opinions issued, Page 18)

YEAR END COMPLIANCE STATUS REPORT FOR 1989

	Complaints	Advisory Opinions	Total Files
Brought forward	378	23	401
Files transferred to compliance	229	15	244
	607	38	645
Files closed	250	6	256
Open files	357	32	389

Year End Status of Open Files:

Complaint files:

In backlog	109
In investigation	205
In conciliation	43
Pending closure	0
	357

Advisory opinion files:

In backlog	5
In preparation	27
Pending closure	0
	32

3. LEGAL PROCEEDINGS STATISTICS

SUMMARY REPORT OF LEGAL PROCEEDINGS – 1989

Carried over from 1988	
Complaints referred to adjudication/prosecution	19
Other proceedings	3
Total	22
Proceedings initiated in 1989	
Complaints referred to adjudication/prosecution	8
Other proceedings	1
Total	9
Dispositions – 1989	
No hearing, resolved	2
Finding of Discrimination	3
Other	2
Total	7
Matters outstanding at year end	
Complaints pending adjudication	9
Complaints before Court of Queen's Bench	7
Complaints before Court of Appeal	0
Appeal to the Supreme Court of Canada	0
Other proceedings in progress	1
Pending compliance with order	5
Pending closure	2
Total	24

4. SPEAKER SERVICE STATISTICS

TOTAL SPEAKER SERVICE ACTIVITY 1985-1989

	1985	1986	1987	1988	1989
Speaking Engagements	125*	89	106	113	108
Consultations	7	5	13	12	13
Outreach Contacts	100	110	100	67	20
Information Booths	1	5	5	2	1
Total	233	209	224	194	142

*This includes 20 speaking engagements by volunteers under the Volunteer Program which was discontinued in 1985 due to insufficient resources.

APPENDIX A

The Manitoba Human Rights Commission Publications List

(Publications available in large print, audiotape or braille on request.)

Sexual Harassment: Does It Affect Your Workplace?/Does It Affect You? (Brochure)*

— Contains information for both employers and employees on what constitutes sexual harassment and what can be done about it.

Guidelines for Taxicab Owner/ Operators and Disabled Passengers (Brochure)*

— Sets out the rights and responsibilities of cab drivers serving taxi customers or potential customers with physical disabilities. Also contains tips to drivers for providing effective, quality service to disabled customers.

The Manitoba Human Rights Commission Annual Report

— Contains information on the Commission's structure and function, major activities of the past year, case examples, statistical highlights.

Guidelines: Housing (under revision)

— Sets out the housing provisions of the Manitoba Human Rights Code. Of interest to tenants, owners, apartment managers and rental agencies.

Guidelines: Pre-Employment Inquiries*

— Outlines the pre-employment provisions of the Code. Of interest to employers, personnel departments, employment agencies, and persons seeking employment.

A Guide for Respondents*

— Outlines the complaint process and the rights and responsibilities of employers, property owners, rental agents, business proprietors, etc. under the Manitoba Human Rights Code.

Advisory Opinions* (Information Sheet)

— Provides general information on when an Advisory Opinion should be requested and the procedures that are followed.

Human Rights

— A multilingual brochure outlining the basic services of the Commission. (Languages include Portuguese, Polish, Laotian, Spanish, Vietnamese and English.)

Fact Sheets (Bilingual)

— General information on prohibited discrimination under The Human Rights Code and specifically discrimination because of pregnancy, disability, reasonable accommodation, harassment, AIDS/HIV, and sexual orientation.

*(available in French or English)

Audio-Visual Materials

"The Eye of the Storm", New York: American Broadcasting Companies Inc., 1970 (28 min.)

16 mm. film

Documentary about a 3rd grade teacher who uses eye-colour as a basis to teach students the realities of prejudice and discrimination.

A list of discussion questions has been developed to accompany this film.

"Buttonville", The Alberta Human Rights Commission, 1979. (25 min.)

16mm. film

Cartoon story about plant people who are all required to wear identifying buttons. When one of the plant people loses his button the whole town learns a lesson about labelling.

A Teacher's Guide is also available which includes various learning activities for Grades 1-3 and Grades 4-6.

"A Different Approach", The South Bay Mayor's Committee for Employment of the Handicapped, 1978 (20 min.)

16mm. film

Designed to dispel myths and prejudices about employment of the handicapped, the film contains a series of comedy vignettes presenting handicapped individuals performing various job functions.

"The Workplace Hustle", Clark Communications, 1980. (30 min.)

16mm. film

A group of women and a group of men discuss sexual harassment in the workplace. Lin Farley, author of *Sexual Shakedown*, talks about sexual harassment, why it happens and the effect it has on its victims.

A list of discussion questions has been developed to accompany this film.

"See What I Say", Michigan Women Filmmakers, 1981. (25 min.)

16mm. film

The deaf discuss how American Sign Language enables them to communicate. A concert for the deaf by Holly Near illustrates the expressiveness and beauty of the language.

"Human Rights for the Deaf", 1982 (29 min.)

Video-tape 3/4 in. format.

— A presentation about human rights made to the Kiwanis Centre for the Deaf, which was video-taped by Channel 13. It includes simultaneous translation in American Sign Language (ASL).

"The Charter and You"

Video-tape 3/4 in. format.

— This 60 minute video-tape, prepared by Confederation College of Applied Arts and Technology for the Department of the Secretary of State, Canada, is accompanied by a Reference Guide and Teacher's Guide. It is intended to be an introduction to *The Charter's* provisions and how they impact upon individual Canadians in their every-day affairs.

"No One Can Take Them Away", 1987 (14 min.)

Videotape VHS and Beta formats available

— This video was produced for schools by the Canadian Red Cross Society. It introduces the topic of human rights and includes information on the history of human rights, the Universal Declaration of Human Rights and landmark events in Canadian human rights history. The film also offers practical suggestions for action on human rights in Canada and the world.

"Human Rights, Human Wrongs", 1987 (30 min.)

Video-tape VHS format

— This video, directed at young people between nine and thirteen and their parents, features Rick Hansen who tells how his human rights are affected by his disability. Native Canadians, girls, women and members of ethnic minorities relate their own experiences with discrimination. The causes and consequences of intolerance are examined through personal interviews, dramatizations and audience participation. The video offers solid strategies for fighting discrimination and creating, instead, a proud record of human rights.

"A Class Divided", Yale University Films for Frontline, 1985 (58 min.)

Video-tape VHS format

— This film is a follow-up to "The Eye of the Storm". The teacher who first split her class in two according to eye colour, re-unites with several of her former students at the school reunion. The discussion between the teacher and her grown students about the long lasting effects of that exercise makes for very interesting viewing.

"What You Should Know About the Human Rights Act" (30 min.)

Video-tape VHS and Beta formats available.

— Although this video-tape refers to The Human Rights Act, the basic content is still relevant under the new Human Rights Code. The tape is divided into three segments, each containing the same information — an explanation about the Commission, the protection offered under the legislation and information pertaining to complaints. Segment 1 is in the Cree language. Segment 2 is in the Island Lake dialect and Segment 3 is in Saulteaux (Ojibway) language.

"Trade Secrets: Blue Collar Women Speak Out," 1986 (23 min.)

Video-tape VHS format.

— This video is excellent for screening to women in pre-technology and pre-trades programs, at high school career days, and to business audiences. Four women — an ironworker, a welder, a sprinklerfitter and an electrician, reveal how their lives changed when they entered traditionally male trades. They tell how they overcame the physical and personal obstacles to find satisfaction in their trades, greater financial power and a new sense of identity as journeywomen.

"AIDS: The Workplace Facts," 1988 (20 min.)

Video-tape VHS format.

— This informative documentary produced by the Canadian Labour Congress and the Canadian Public Health Association, focuses on AIDS and workplace concerns. It reviews the medical evidence that AIDS/HIV infection is *not* transmitted by casual contact with a person who is infected with the virus. Protections from discrimination for persons with AIDS are discussed.

"One-to-One" (8.5 min.)

Video-tape, VHS format

— This video explores communication problems between hearing and hearing-impaired people, especially in the service industry. It helps create sensitivity to these issues among hearing people, and includes valuable suggestions on how to serve a hearing-impaired person. Facilitator's guide available with the tape.

APPENDIX B

MHRC USE ONLY/ RÉSERVÉ À LA CDPM Rec'd by:/Reçu par: _____ Date: _____	**Complaint of Discrimination Under The Human Rights Code (Manitoba)** **Discrimination — Plainte portée en vertu du code des droits de la personne (Manitoba)**	File Number:/ N° de dossier : _____ Page ____ of ____/ ____ page de ____

Name and Address of the Complainant/
Nom et adresse du plaignant

Name and Address of the Respondent/
Nom et adresse de l'intimé

Name and Address of any person or class of persons discriminated against in addition to or other than the Complainant(s)/
Nom et adresse de toute personne ou tout groupe de personnes au nom de qui ou avec qui le plaignant a porté plainte

The Complainant alleges that in the Province of Manitoba/
Le plaignant allègue que, dans la province du Manitoba

On or about the/
le, ou vers le _____ day of/
jour de _____, 19_____;

OR/OU

on a continuing basis up to and including the/
de façon permanente jusqu'au _____ day of/
jour de _____, 19_____

that the Respondent(s) did contravene section(s)/
l'(les) intimé(s) a(ont) violé les dispositions de l'(des) article(s) _____ of **The Human Rights Code**, or any other applicable section as follows:/
du Code des droits de la personne, ou tout autre(s) article(s) qui s'y rapporte(nt), de la façon suivante:

SAMPLE

I certify that the foregoing information is correct to the best of my knowledge and I believe that the events described above constitute a contravention of **The Human Rights Code**./

Je certifie par la présente que les renseignements susmentionnés sont, en autant que je sache, exacts et complets et que les faits cités constituent une violation **du Code des droits de la personne**.

City/Town Complaint Signed At/ Nom de la ville ou de la municipalité où la plainte a été portée	Date Day/ jour | Month/ mois | Year/ année	Signature of Complainant/ Signature du plaignant

APPENDIX C

Manitoba Human Rights Commission

Public Education Policy

The Manitoba Human Rights Commission believes that discrimination cannot be eliminated from the social environment through legislative sanctions alone. As stated in the preamble to *The Human Rights Code*, "much discrimination is rooted in fear and ignorance and education is essential to its eradication . . ." *The Code* then goes on to require the Commission to develop, promote and conduct educational programs which are designed to eliminate discrimination and which promote understanding of the rights and responsibilities contained within *The Code*. In addition, the Supreme Court of Canada has, in a number of decisions, emphasized the role of human rights commissions as agents of social change through education.

The resources available to administer *The Code* are limited. In addition to its responsibility to deliver educational programs, the Commission must also investigate and conciliate complaints from persons who believe that they have been discriminated against; and the Commission must issue advisory opinions to those who are attempting to ensure that their business practices are in compliance with *The Code*. It is therefore essential that resources are effectively utilized by establishing appropriate priorities. To this end, the Manitoba Human Rights Commission has adopted the following policy for 1989/90.

Policy:

Recognizing that the Compliance unit is already over-extended and that there is a backlog of uninvestigated complaints, priority will be given to those activities which are designed to prevent discrimination rather than those activities which tend to encourage new complaints. The Commission will, however, continue to provide information to those who are most likely to experience discriminatory treatment to ensure that they are aware of the remedies available to them under *The Code*.

Through a program of business education, the Commission will endeavour to assist business in the development of practices and policies which are non-discriminitory and which will reduce the likelihood of complaints of discrimination arising out of misunderstandings. Preventative programs will also include those which promote the teaching of human rights in Manitoba schools and those which promote the initiation of special programs designed to eliminate barriers to equality and to eradicate the effects of historic and systemic discrimination.

In recognition of the International Decade of Disabled Persons and the 2nd International Decade for Action to Combat Racism and Racial Discrimination, the Commission will give priority to those educational activities which promote the objectives of these Decades.

While the Commission has established these priorities for public education programs at this time, it is aware of its obligation to ensure that human rights information is available to all residents of Manitoba, regardless of status or geographic location.

In order to obtain the maximum benefit of limited resources, an effort will be made to encourage and support community groups who are able and willing to take the initiative in the delivery of human rights education.

This policy will be reviewed on an annual basis and the results of the review will be reported in the Commission's annual report.